OMBUDSMAN OF BRITISH COLUMBIA

Special Report No. 14

to

The Legislative Assembly of British Columbia

THE HAMILTON CASE

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone: (604) 387-5855
Zenith 2221

June 21, 1985

The Honourable K. Walter Davidson
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings
Victoria, B.C.
V8V 1X4

Mr. Speaker:

I have the honour to submit herewith a special report to the Legislative Assembly, pursuant to section 30(2) of the Ombudsman Act, R.S.B.C. 1979, c.306.

This report sets out my investigation of the complaint of Mr. J.D. Hamilton, Director of Forward Sawmills Ltd., against the Workers' Compensation Board and the Ministry of Attorney General, and my recommendations in the matter.

Yours sincerely,

Karl A. Friedmann
Ombudsman

OMBUDSMAN OF BRITISH COLUMBIA

Special Report No. 14

To

The Legislative Assembly of British Columbia

An investigation by the Ombudsman into the complaint of Mr. J.D. Hamilton, Director of Forward Sawmills Ltd., against the Workers' Compensation Board and the Ministry of Attorney General.

TABLE OF CONTENTS

I. a) INTRODUCTION..... 1

b) BRIEF HISTORY OF THE PROBLEM..... 2

c) INVESTIGATION OF THE COMPLAINT..... 6

d) FINDINGS AND RECOMMENDATIONS.....17

II. TABLE OF APPENDICES.....18

INTRODUCTION

Forward Sawmills Ltd. owed a debt to the Workers' Compensation Board (WCB). Forward has ceased operations, and had few assets. Forward's Director, Mr. Hamilton, owned logging equipment which had been purchased in his own name. The WCB collected the debt against the company, by sale of Mr. Hamilton's equipment, leaving Mr. Hamilton with a debt of $60,000 in his own name.

To do this, the WCB pre-empted another registered creditor, Island Finances Ltd. I do not question the right of the WCB to pre-empt other creditors, even though a recent report by the Law Reform Commission recommended limitations on this power. But it is my opinion that the WCB, like other creditors, must act within the power given by statute. It is my finding that the WCB did not.

As can be seen from the report and its appendices, the history of this problem is lengthy, and it is easy to become mired down in the details of the case. The simple fact remains that my complainant has lost equipment for which he paid over $70,000. The equipment went to pay his company's debt to WCB, of about $6,000. He was left with a chattel mortgage of over $60,000 secured only on his name. My complainant is a responsible man, who has paid his debt to the mortgage holder. He is left with nothing. His company has no work and he has no equipment.

For the past year I have recommended that the Ministry of Attorney General and the WCB submit to arbitration on the amount of compensation owing, and that my complainant's costs be borne by the Province. My report contains a description of the events of that year. In this introduction it is sufficient to say that no agreement has been reached to resolve my complainant's losses. Rather it has been suggested that my complainant experience further delay while the government seeks a legal interpretation from the Supreme Court of British Columbia.

I do not believe that it is just or equitable for the government to expect my complainant to wait any longer. It has been three years since his equipment was seized. Until three years ago my complainant was in business, for himself, as he had been for twenty years. For the past three years, and until this problem is resolved, he must rely on sporadic employment in the logging industry. I urge the Legislative Assembly to intervene to ensure that justice is not further delayed.

A BRIEF HISTORY OF THE PROBLEM

Mr. Hamilton is a logger. He is also a Director of Forward Sawmills Ltd., a company working in the Forward Harbour area, near Campbell River. The company logged a timber licence there, and also operated as a subcontractor for Doman Industries Ltd. Like all employers, Forward was assessed an amount owing to the WCB for insurance of its employees. In the late seventies Forward fell behind in payment of its assessments.

Part of the reason for this was a dispute which developed with Domans. Domans claimed ownership of a large quantity of cedar logs felled and stored on the beach at Forward Harbour. Forward believed the logs were from its own licence. Until this dispute was resolved the logs could not be sold.

When the forest industry began to experience a down turn in 1981-1982, the WCB assessment was still unpaid and the logs were still on the beach. Forward ceased operations, leaving all its equipment on site. Most of the equipment had been purchased by Mr. Hamilton personally, in 1978 to 1980. He had bought a D8 caterpillar tractor, two skidders, two logging towers, and some small equipment. To raise the money he had personally signed an agreement with a Victoria finance company, Island Finances Ltd., which gave the company a mortgage over all of the equipment. That mortgage was registered with the Central Registry of the Ministry of Consumer and Corporate Affairs.

When Forward Sawmills ceased operating, Mr. Hamilton owed Island Finances about $60,000. Island Finances did not take its remedy of repossession of the equipment: instead it waited, knowing that the economy was poor for logging, and that Mr. Hamilton would pay as soon as he was able.

The WCB did not wait. Its original assessment debt of about $4,000 had risen to over $6,000 with penalties and interest. This was a debt owing by the company, Forward Sawmills Ltd. Under section 42 of the Workers Compensation Act, the Board may issue a certificate stating that an

assessment was made, and the amount remaining unpaid. Certificates were issued, which named Forward Sawmills Ltd. as the debtor. The certificates were filed in County Court pursuant to section 45(2) of the Workers Compensation Act. Writs of seizure and sale were issued against Forward Sawmills Ltd., and sent to Sheriff Services in Campbell River for enforcement. No writs were issued against Mr. Hamilton.

Those writs were received by the sheriff in the spring of 1982. The sheriff contacted Mr. Hamilton, and gave him some time to come up with the money to pay Forward's debt. Mr. Hamilton tried to convince the sheriff to seize and sell the cedar logs on the beach. The sheriff would not do that, because of the dispute with Domans as to who owned the logs. The sheriff did allow Mr. Hamilton time to try to make a private sale or to settle with Domans.

In July, 1982, the sheriff flew to Forward Harbour, taking a heavy duty mechanic with him. The sheriff placed seizure on two pieces of equipment, the D8 caterpillar and one of the skidders both of which were owned by Mr. Hamilton. This equipment was left at Forward Harbour with the other, unseized machinery. On return to Campbell River the sheriff checked into various methods of selling the equipment, including moving it to Vancouver for auction.

Several months went by. The WCB sent the sheriff a cheque for $2,500 to cover the cost of moving the equipment. The sheriff arranged for repairs on the equipment. Meanwhile, Mr. Hamilton was still trying to find a

buyer for the logs, so that Forward's debt could be paid. Throughout this time the resale value of Mr. Hamilton's equipment was dropping, because of the slump in the forest industry. Perhaps because of this slump, Mr. Hamilton was unable to find a buyer for the logs, despite his many attempts and the sheriff's co-operation in allowing this delay.

By November of 1982 there were few auctions of logging equipment being held, and the sheriff recognized that the cost of moving the equipment may be prohibitive, when compared to the likely price at sale. Nevertheless, the sheriff continued, obtaining estimates on the cost of moving the cat and the skidder out by barge.

In December, 1982 an employee of the WCB visited the sheriff office, and told the sheriff that the WCB might not go through with the sale. The sheriff had known that the equipment belonged to Mr. Hamilton, not to the company, Forward Sawmills Ltd., but he did not think that this was a problem. The sheriff thought that section 52 of the Workers Compensation Act allowed the seizure of goods belonging to a director of the company. When the sheriff learned from the Board's employee that the WCB may not interpret section 52 the same way, he wrote to the WCB asking for instructions on the legal question.

The WCB never answered that question. Instead it wrote a letter authorizing the sheriff to advertise the sale of the equipment in the local paper. A purchaser was found. The purchaser offered $6,000 "as

is, where is" for the cat and skidder. In January, 1983, the WCB authorized the sheriff to accept that offer.

When the purchaser went to Forward Harbour to remove his equipment, he also removed a second skidder. This skidder had never been seized by the sheriff, and, like the other equipment, it belonged to Mr. Hamilton, not to the company. Mr. Hamilton discovered the second skidder had been moved, and told the sheriff that he had contacted the RCMP and may ask that charges of theft be laid. Although Mr. Hamilton did not withdraw the allegation of theft, the sheriff accepted $3,710 from the purchaser, as payment for the second skidder.

In all, the sheriff raised $9,500 from the sale of equipment for which Mr. Hamilton had paid over $78,000. The WCB received $6,476.48, the sheriff's costs were over $2,500, leaving a balance of $505.85 which was sent to Island Finances.

MY INVESTIGATION

Mr. Hamilton contacted my office soon after the sheriff sale. Why, he asked, had the sheriff sold for $9,500 goods for which he had paid over $78,000? Why had the sheriff refused to seize logs owned by his company, instead of the equipment? What was he supposed to do about his chattel mortgage on the equipment, on which $60,000 was still owing to Island Finances Ltd.? Why had the sheriff sold the second skidder to the purchaser of the first two items, when the sheriff knew that the

purchaser had removed the second skidder from Forward Harbour without authority and that Mr. Hamilton was considering alleging theft thereby? Why were the sheriff costs so high: $2,500 on a debt of $6,500? Why did the WCB have these assets seized, effectively putting him out of business, when a private finance company was willing to wait to collect on a debt ten times as large?

I believed that all of these were complaints within my mandate. In some of the issues, Mr. Hamilton may have had the option of filing a suit against the Province. I considered whether or not it would be appropriate to decline to investigate, and refer him to the courts. I decided that I must go ahead. Mr. Hamilton had come to me seeking justice, and he was not financially capable of bearing the cost of a suit against the Province. I began a lengthy investigation of the actions of both the WCB and the sheriffs. During that investigation I became aware of one factor so crucial that I began to focus my investigation on that factor alone, reserving the right to address all other issues at a later date if necessary. The paramount question which emerged was whether the sheriff could lawfully seize and sell on the writs of seizure and sale, equipment that was owned not by the Board's debtor, but by an individual, Mr. Hamilton.

Although I did not complete the investigation of most of the original complaints made by Mr. Hamilton, my investigation did reveal information which added substance to his complaints. For example, the logs which the sheriff declined to seize were subsequently determined to belong to the company, and were sold for over $40,000.

Another set of facts revealed by my investigation, but unrelated to the legal question was sufficiently unusual that I believed it must be pursued. A review of the sheriff's file had shown that Mr. Hamilton had usually received good co-operation from the sheriff. The sheriff had made commendable efforts to ensure that Mr. Hamilton was kept informed of his position, and to allow Mr. Hamilton time to act to prevent the execution. But a problem was apparent when I reviewed the manner of the "sale" of the second skidder, which had been removed from Forward Harbour by the purchaser of the first two pieces of equipment. This "sale" had gone ahead, despite the fact that the sheriff knew that Mr. Hamilton was considering asking for charges under the Criminal Code, and without any proof to the sheriff that Mr. Hamilton had reached an agreement to sell to the purchaser.

The sheriff was in contact with Island Finances, because of their chattel mortgage on all the equipment. Letters between Sheriff Services and Island Finances suggested that the sheriff did not know under what authority he sold the second skidder. In a letter dated February 28, 1983, the sheriff wrote "this will confirm that Sheriff Services ... also sold one (1) mountain logger skidder ML200, serial #73181". A later letter, dated April 8, 1983, takes the position that Sheriff Services did not "sell" the second skidder, but rather seized monies owing from the purchaser to Mr. Hamilton. The position became even less clear, in a letter dated May 4, 1983, written by the solicitor to Court Services Branch.

> "As I understand it, the Deputy Sheriff told [purchaser's name] that they would seize any cheque made payable to Mr. Hamilton under section 52 of the Court Order Enforcement Act. In fact, the necessity to do so was avoided by [purchaser's name] bringing a cheque into the Sheriff's office, made payable to the Ministry of Finance".

All this, when Mr. Hamilton had not withdrawn his allegation of theft by the purchaser. This issue, uncontested by the Ministry of Attorney General, seemed so important that I did proceed to make a formal finding that the Deputy Sheriff acted improperly in receiving the amount of $3,710 from the purchaser, as some form of "payment" for the second skidder without confirmation from Mr. Hamilton that his allegation of theft had been withdrawn in favour of an agreement to sell for a price certain. I did not make any recommendation specific to this finding.

Instead, I commenced a detailed investigation of the paramount question of whether any of the equipment, owned personally by Mr. Hamilton could be sold on the basis of the writs against Forward Sawmills Ltd. My staff obtained the files of both the WCB and Sheriff Services, and discussed the matter with staff of both agencies. I also sought an independent legal opinion from a recognized practitioner in the field of debt collection. I reviewed this information, together with the representations I received from the Board and the Ministry, and I concluded that the sale of this equipment could not lawfully proceed from the writs of seizure and sale.

The legal issue is not particularly complex. Section 45 of the Workers Compensation Act gives the Board the power to issue a certificate stating that an assessment was made, the amount owing, and the person by whom it is payable. Once filed in County or Supreme Court that certificate becomes an order of the Court, and is enforceable "as a judgment of the court against that person for the amount mentioned in the certificate". The "person" named in the writs received by the Sheriff office in Campbell River was Forward Sawmills Ltd.

Section 52 of the Workers Compensation Act gives the Board a statutory lien for its debts by employers. That lien is a right or claim to the value in goods equal to the value of the debt: the lien is not in itself an authority to actually take possession of or sell the goods. The statutory lien granted to the WCB is payable in priority over all other liens and charges, except those for wages, and applies to property or the proceeds of property used or produced by the business assessed. Where an employer is a corporation, the word "property" includes the property of principals of the company, so long as that personally owned property was used in or by the company. This lien may be enforced pursuant to the Court Order Enforcement Act.

What all this means is that firstly the Board had a claim on Mr. Hamilton's equipment, and secondly the Board could have proceeded in court to request an order for seizure and sale of Mr. Hamilton's

equipment. It did not. It did file certificates against Forward Sawmills Ltd. The Board was not sure that these certificates authorized the sale of Mr. Hamilton's equipment. In a memo to his Legal Services Branch, dated December, 1982, an employee of the Board, a Collections Officer, wrote:

> "It was indicated by the writer to the Sheriff's office that our policy has been that section 52 of the Act grants the Board a lien against property owned by a director, principal or shareholder of the company, where used in the business, however, did not permit the Board the right to seize equipment on the strength of this section of our Act.
>
> In view of the amount outstanding and the circumstances I would request that you endeavour to obtain an Order for Sale of the equipment belonging to the principal of the subject company on the basis of section 52(2) of the Act.
>
> Regardless of the outcome of such action, I think it is a worthwhile exercise to test the strength of this particular section of the Act" (my emphasis)

The Legal Services Branch did not reply. Despite that, the Board's employee authorized the sheriff to take appropriate steps to sell the equipment to the highest bidder.

All of these facts were detailed in my letter of February 14, 1984, written to both the Ministry of Attorney General and the Board pursuant to section 16 of the Ombudsman Act. Neither the Board nor the Ministry has taken issue with the facts outlined in my initial report. In fact, the Board's only response was to dispute my jurisdiction. (Appendix B). The Ministry, on the other hand, confirmed its difficulty in achieving a definitive interpretation of the law in this matter, and proposed a resolution. (Appendix B).

The Ministry of the Attorney General proposed that it would apply to Court for an interpretation of section 52 of the Workers Compensation Act, using Mr. Hamilton's case as the factual basis for focusing the issue. This seemed a constructive route to follow, and I was prepared to suspend my investigation to allow this to happen.

Regrettably, I could not reach agreement with the Ministry on the terms of such a resolution. I felt the Board and the Ministry should bear any legal costs accruing to my complainant. I could see no reason why Mr. Hamilton should bear the cost of the Crown's inability to determine the correct interpretation of its legislation, particularly when Mr. Hamilton may be only one of many individuals whose legal position needs such clarification. Also, I was unwilling to suspend my investigation unless the proposed resolution was timely. I did not believe it would be reasonable to expect Mr. Hamilton to wait for years, while the legal question was debated. For this reason I asked for the Board and the Ministry's commitment to act on the decision of the Supreme Court of British Columbia. The Board was continually informed of my negotiation with the Ministry, and received copies of all our correspondence but chose not to participate.

As neither the Board nor the Ministry disputed the facts revealed by my investigation or produced any opinion or precedent to dispute the legal opinion I obtained, I issued my final report in this matter. I concluded that the sale of Mr. Hamilton's equipment was based on a mistake in law, and I recommended that the Board and the Ministry submit to arbitration to determine the actual amount of compensation owing, and their proportionate liability.

The Board replied, again stating its intention to "inititate a legal action in the courts to settle the Board's rights in this matter." (Appendix D). That application subsequently proved to be a test of my jurisdiction to investigate Mr. Hamilton's complaint. The Board filed a petition in August 1984, in which it listed ten ways in which it believed I had exceeded or lost my jurisdiction, or usurped the authority of the Supreme Court. The Board asked for an order quashing my decision, an injunction preventing me from further action, and a declaration that I had no jurisdiction to investigate Mr. Hamilton's complaint. Following that application to the Court, the Minister of Labour, for the Lieutenant Governor in Council, wrote to inform me in October 1984 that Cabinet believed it was inappropriate to consider my recommendation until the Supreme Court of British Columbia had decided the jurisdictional challenge.

Almost eight months later, the WCB's application was dismissed by Mr. Justice Gibbs in April 1985. Mr. Justice Gibbs' decision did not address the question of the legality of this seizure and sale.

I wrote to the Lieutenant Governor in Council immediately, requesting its decision on the report I had submitted to Cabinet in July 1984, before the WCB applied to Court. Cabinet requested that I provide information as to the amount which would be necessary to reimburse Mr. Hamilton and Island Finances for their losses. I had not recommended a specific payment. I am not an expert in the value of second-hand logging equipment, and for that reason, I had continued to recommend that the Board and the Ministry submit to arbitration on the question of compensation. Nevertheless, in order to assist Cabinet I obtained sample

prices on similar equipment and I informed the Lieutenant Governor in Council that the amount at issue appeared to be between $110,000 and $120,000.

In May of this year, I received the Lieutenant Governor in Council's response. It proposes to return yet again to the plan put forward by the Ministry of Attorney General in April, 1984, where the Ministry, the Board and Mr. Hamilton seek a declaration from the Courts. To that end, Mr. Hamilton's legal costs would be borne by the Crown to a maximum of $2,500. Should the "ultimate adjudication" uphold my opinion, then arbitration would proceed forthwith on the terms I had specified.

I read this letter with some consternation. Although neither the Ministry nor the Board had ever refuted the legal opinion I obtained, their silence was construed by the Lieutenant Governor in Council to mean that there had never been "acceptance" of my opinion. The matter was now to be tested. Although the Crown was agreeing to pay Mr. Hamilton's legal costs in that action, I had no assurance that the maximum of $2,500 would be sufficient. It was certain that $2,500 would not suffice if either the Board or the Ministry appealed a decision by the Supreme Court of British Columbia to the higher Courts.

Even more crucial, in my mind, was that there was no assurance of results for Mr. Hamilton within the foreseeable future. When the proposal was first suggested by the Ministry, I had been concerned that the interpretation could take years if either government agency would not accept the decision of the Supreme Court of British Columbia and would

carry on with further appeals. Now, a year later, the same plan was proposed again. When I received the Cabinet's proposal almost three years had passed since the seizure of Mr. Hamilton's equipment, and it was more than two years since he contacted my office. I found it difficult to contemplate a proposal from Cabinet to send Mr. Hamilton back for further litigation.

For these reasons I urged the Lieutenant Governor in Council on June 3, 1985 to reconsider my recommendation of an immediate referral to arbitration. I have asked that the inaction of the Ministry and the Board not be construed as good reason to subject Mr. Hamilton to further delay.

Meanwhile, Mr. Hamilton, the epitome of reasonableness and patience, awaits the outcome of my efforts. Island Finances Ltd. is also waiting patiently. Although Mr. Hamilton has paid over $60,000 to Island Finances since the seizure, a debt of over $19,000 remains. That amount is interest on the principal, accrued since the seizure in January 1982. Island Finances believes that it would be inequitable to attempt to collect that interest from Mr. Hamilton, when the seizure was not lawful. Island Finances' opinion is that this is a debt owing by the government whose employees created this problem.

I have since received a further response from the Secretary to Cabinet which in fact rejects my recommendation for immediate arbitration. It contains a promise that Mr. Hamilton could expect further consideration for legal costs.

Mr. Hamilton would prefer not to litigate in the Courts. He suffered a serious injustice three years ago. Two years ago he came to me as Ombudsman, to secure justice for himself. It was my finding that he has a substantiated complaint. I cannot in good conscience now agree to a proposal whose main purpose is to interpret the nature of the powers of the WCB, and which would send Mr. Hamilton back to the Courts, possibly delaying justice for a further three or four years. To me that is not justice: justice delayed is justice denied.

I do not believe that I can ask Mr. Hamilton and Island Finances to wait any longer. Accordingly I request the Legislative Assembly implement my recommendation of immediate arbitration, on the terms specified herein, or take such other corrective action as it deems fit.

FINDINGS AND RECOMMENDATIONS

Findings

1. That the sheriff made a mistake of law by proceeding to sale of the seized equipment on writs issued against Forward Sawmills Ltd.

2. That the sheriff was negligent in proceeding to sell the seized items without seeking legal advice as to the validity of the seizure: the negligence arises once the sheriff became aware that the Board could not confirm his interpretation of section 52 of the Workers Compensation Act.

3. That the Board's employee was negligent in authorizing the sheriff to accept the bid without obtaining legal advice as to the validity of the seizure: the negligence arises when the employee authorized the sale knowing he had received no response to his request for a legal opinion.

4. That the sheriff acted improperly in receiving payment for the second skidder without confirmation from Mr. Hamilton that his allegation of theft had been withdrawn in favour of an agreement to sell for a price certain.

Recommendations

1. That the Ministry and the Board submit to arbitration pursuant to the Arbitration Act.

2. That the arbitrator(s) appointed be instructed to accept my findings and be empowered to decide the following questions:

    1. the amount of compensation to be paid to Island Finances Ltd.;

    2. the amount of compensation to be paid to Mr. J.D. Hamilton; and

    3. the proportionate liability of the Board and the Ministry for compensation to Island Finances Ltd. and to Mr. Hamilton.

APPENDICES*

		Page
A.	Preliminary Report and Associated Correspondence:	
	- preliminary report dated February 14, 1984 and appendices thereto	19
	- addendum to preliminary report, dated March 6, 1984, and enclosure	55
	- letters (2) to Ministry of Attorney General extending the time to respond to the preliminary report	58
	- letter to the Board extending the time to respond to the preliminary report	60
B.	Response to Preliminary Report and Associated Correspondence:	
	- letter to Ombudsman from N.C. Attewell, Secretary to the Board, dated March 21, 1984	61
	- response thereto, dated April 3, 1984	63
	- letter to Ombudsman from George Copley, Ministry of Attorney General, dated March 30, 1984	65
	- letter to E.N. Hughes dated April 12, 1984	66
	- letter to Ombudsman from G. Copley dated April 27, 1984	68
	- letter to Board and Ministry of Attorney General dated May 17, 1984	70
C.	Legal Opinion:	
	- opinion of Mr. Leon Getz, Barrister & Solicitor, dated June 11, 1984	71
D.	Final Report and Associated Correspondence:	
	- final report of the Ombudsman to the Board and the Ministry of Attorney General, dated June 18, 1984	74
	- response from G. Copley, dated June 25, 1984	78
	- response from N.C. Attewell, dated July 6, 1984	79
E.	Decision of Mr. Justice Gibbs, dated April 9, 1985	80
F.	Report to the Lieutenant Governor in Council and Associated Correspondence:	
	- report to the Lieutenant Governor in Council, delivered July 20, 1984	88
	- Letter to Ombudsman from the Honourable R.H. McClelland, dated October 31, 1984	92
	- Letter to the Honourable W.R. Bennet, P.C., dated February 5, 1985	93
	- Letter to the Ombudsman from Mr. Bert Hick, dated March 13, 1985	95
	- Letter to Mr. Bert Hick dated April 10, 1985	97
	- Letter to Mr. Bert Hick dated April 11, 1985	98
	- Letter to the Ombudsman from Mr. Bert Hick dated April 16, 1985	101
	- Letter to Mr. Bert Hick dated April 23, 1985	102
	- Letter to the Ombudsman from Mr. Bert Hick dated May 10, 1985	103
	- Letter to Mr. Bert Hick dated June 3, 1985	108
	- Letter from Mr. Bert Hick dated June 13, 1985	109

* For ease of reference the appendices have been numbered at the top of each page.

Legislative Assembly
Province of British Columbia

OMBUDSMAN

9 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

19

File No: 83 30149
83 30723

February 14, 1984

Mr. W.Flesher
Chairman
Workers' Compensation Board
6951 Westminster Highway
Richmond, B. C.
V7C 1C6

Mr. F.N. Hughes, Q.C.
Deputy Attorney General
609 Broughton Street
Victoria, B. C.
V8V 1X4

Gentlemen:

I am writing pursuant to section 16 of the Ombudsman Act to notify you of the apparent grounds for making a finding and of the recommendations I may make in the complaint of John Hamilton, Director of Forward Sawmills Ltd. I have taken the unusual step of writing this letter jointly to both the Board and the Ministry because the actions of the two agencies are inextricably entwined in the creation of the problem of which Mr. Hamilton complained.

Mr. Hamilton's original complaint to my office was that Sheriff Services had sold his equipment for far less than its worth, as a result of a seizure on writs issued by the Workers' Compensation Board. He also complained that Sheriff Services had acted improperly in dealing with and selling a skidder to Mr. Doug Lloyd of Crescent Ridge Contracting, knowing that Mr. Hamilton had alleged to the local RCMP Police that Mr. Lloyd had stolen that skidder from him.

In the investigation of these issues, I became aware of many other apparently problematic actions. For example, questions were raised in my mind as to why the Board did not pursue its option against Doman Industries under section 51 of the Workers' Compensation Act, and why the executing sheriff did not seize in the presence of the debtor as required by section 15 of the Debt Collection Act. I have chosen not to focus on such issues at this time, because, in my mind, there are two central concerns of such magnitude that they alone will serve to make my point. These two concerns are outlined below. I reserve the right to address all the other issues, should either the Board or the Ministry fail to see the need for a remedy based on the grounds set out below.

...2

Before proceeding to outline the relevant facts from which my findings may be inferred I wish to acknowledge that my perusal of the files maintained by both the Board and Sheriff Services, shows evidence of many attempts to avoid this seizure. In particular I have noted the actions of Deputy Sheriff Owens, who appears to have made commendable efforts to ensure that Mr. Hamilton was kept informed of his position, and to allow Mr. Hamilton time to act to prevent the execution. Notwithstanding these efforts, in my opinion the facts outlined below serve as apparent grounds for findings under the Ombudsman Act that:

1. Deputy Sheriff Owens made a mistake of law by proceeding to sale of the seized items.

2. Deputy Sheriff Owens was negligent in proceeding to sell the seized items without seeking legal advice as to the validity of the seizure.

3. Mr. K.G. Robertson was negligent in authorizing the Sheriff to accept the bid without obtaining legal advice as to the validity of the seizure.

4. Deputy Sheriff Owens acted improperly in receiving the amount of $3,710.00 from Mr. Lloyd, as some form of 'payment' for the second skidder.

Relevant History, Part 1

In March 1982 the Board forwarded to Campbell River Sheriff Office writs totaling $6476.48 against Forward Sawmills Ltd. Memos apparently enclosed, listed assets of a cat and skidder, located in Forward Harbour. In July 1982 Sheriff Services requested and received a lien check against the equipment suggested for seizure. That check revealed a chattel mortgage between John Hamilton and Island Finances, for amongst other items,

> Moutain logger skidder ML 200, serial 73166
> D/8 Caterpillar tractor serial 14A4101 together with ROPS Canopy, winch and blade
> Mountain logger skidder ML200, serial 73181

The name Forward Sawmills Ltd., the judgement debtor on each of the three writs, does not appear on this chattel mortgage. It is not clear from file material whether or not the knowledge of Mr. Hamilton's personal ownership was passed to the Board at this stage. In any event, the Board's own file reveals that in March of 1979 Mr. Hamilton informed the Board himself that the equipment was owned personally.

...3

From July to early December 1982 Sheriff Services continued to act on the writs. In late July the cat and one skidder were seized, and D/S Owens began a long series of negotiations with Mr. Hamilton, Island Finances, and the Board around the options for satisfaction of the writs, and different methods of sale of the seized equipment.

On December 7, 1982 Mr. Robertson of the Board's Collections Section, met with D/S Owens, and the question of Mr. Hamilton's personal ownership of the seized goods was discussed. As the documents appended to this letter show, it is clear that to December 7th D/S Owens was acting on the belief that the Board's writ entitled him to seize goods owned personally by Mr. Hamilton. It is also clear that D/S Owens, on learning that his belief may be in error, requested clarification from the Board (See letter dated December 9th).

On December 15th Mr. Robertson informed D/S Owens by phone that the Board's lawyer would be making an application for a court order allowing sale of the equipment. December 16th he drafted a memo to G.W. Massing of the Board's Legal Services requesting such an order. In that memo, (see appendix #4) he writes

> "In view of the amount outstanding, and the circumstances I would request that you endeavour to obtain an order for sale of the equipment belonging to the principal of the subject company on the basis of section 52(2) of the Act.
>
> Regardless of the outcome of such an action, I think it is a worthwhile exercise to test the strength of this particular section of the Act". (my underlining)

On January 12, 1983 D/S Owens was informed by Mr. Massing that no application had yet been made, but that it should not take long. On January 21st Mr. Robertson advised D/S Owens to advertise, and then take "appropriate steps...to sell the equipment to the highest bidder". On January 31st Mr. Robertson again wrote to the sheriff..."Accordingly, we would agree that the present offer to purchase be accepted". At no point between January 12th and January 31st was the order under section 52(2) obtained. In fact my staff were told by both Mr. Massing and Mr. Robertson that no reply, verbal or written, was ever made to the memo of December 16th cited above.

...4

Apparent grounds for findings 1, 2, 3, listed above

From the facts listed above, it is clear that at the time of the sale of Mr. Hamilton's cat and skidder, neither the Board nor Sheriff Services were convinced of their ability to make such a sale based on the writs to hand. It is also uncontested that neither the Board nor Sheriff Services obtained legal advice which clarified their uncertainties. Nor did the Board obtain the order discussed.

I may have cause to find that, not only were the Board and Sheriff Services negligent in proceeding to sale without clarification of the validity of the seizure, but also that the seizure and sale were based on a mistake in law. Section 52 of the Workers' Compensation Act provides that an amount due by an employer to the Board on an assessment, constitutes a lien in favour of the Board, payable in priority over all liens, charges or mortgages, with respect to the property or proceeds of property used in connection with the industry with respect to which the employer was assessed. For the purpose of this section, where the employer is a corporation the word property "includes the property of any director, manager or other principal". In other words, section 52 creates a statutory lien, and gives it priority of other liens. Nothing in this section speaks to the enforcement of such a lien.

It seems to me that unless the Board has the personal possessions referred to in section 52(2) in their lawful possession, the only way that the Board can proceed to collect on an assessment owing from an employer is under section 45 of the Workers' Compensation Act. That section allows the Board to issue a certificate stating the assessment made, the amount remaining unpaid and the person by whom it is payable. Such a certificate, on being filed "becomes an order of that court and may be enforced as a judgment of the court against that person for the amount mentioned in the certificate". (my underlining.)

I do not believe that section 52 of the Workers' Compensation Act on its own, gives the Board or its agents the power to seize and sell property. Even if such power were given, section 52(2) does not automatically permit the sheriffs to execute against a director of a company in his personal capacity. Section 45 also does not appear to speak to

...5

execution: Thus, the only authority I can find is that granted by the Court Order Enforcement Act. At section 30 of the Court Order Enforcement Act a judgment debtor is defined. Judgment debtor means "the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the state in which it was given" (my underlining). At section 42 different definitions are given, for the terms "execution debtor" and "judgment debtor". Neither of those appear to extend the definition quoted above.

Thus I may have cause to find that Sheriff Services erred in law by selling Mr. Hamilton's equipment, and that both the Board and Sheriff Services were negligent in proceeding to sale of that equipment while uncertain that such a sale could be effected based on the writs to hand.

Relevant History, Part II

Following the sale of the first skidder and cat to Mr. Lloyd, D/S Owens was contacted by Mr. Hamilton regarding a second skidder, apparently removed by Mr. Lloyd. This second skidder had not been seized by D/S Owens. D/S Owens quickly became aware that Mr. Hamilton was alleging theft by Mr. Lloyd, and that a complaint had been made to the local RCM Police. According to D/S Owens' notes, he was informed by Mr. Lloyd that Mr. Lloyd did have possession of the second skidder, and was hoping to negotiate a purchase from Mr. Hamilton. The price discussed between Mr. Lloyd and D/S Owens was $3500.00 to $4000.00, despite the fact that the skidder was referred to by Mr. Lloyd as "just junk".

The sheriff file shows no conversation between D/S Owens and Mr. Hamilton confirming the reality of the negotiations for sale, and Mr. Hamilton has no memory of such a conversation. D/S Owens, however, believes he may have phoned Mr. Hamilton, and that Mr. Hamilton said that it was possible that he and Mr. Lloyd would reach such an agreement. Without any confirmation of the completion of such an agreement, or of the price, D/S Owens accepted from Mr. Lloyd, a cheque made payable to the Minister of Finance. The cheque was for $3710.00, being $3500 plus $210 social services tax.

The notes and letters on the Sheriff Services file are unclear as to the mechanism by which these monies were considered to be payable to the sheriff. In a letter to Island Finances, dated February 28th, 1983, D/S Owens states

> "this...will confirm that Sheriff Services...also sold one (1) mountain logger skidder ML200, serial # 73181."

...6

Later correspondence takes the position that Sheriff Services did not "sell" the second skidder, but rather seized the monies owing from Mr. Lloyd to Mr. Hamilton (see letter to Crease & Company dated April 8th, 1983). The position becomes even less clear in a letter dated May 4th, written by Mr. Roger Walker, solicitor to Court Services.

> "As I understand it the Deputy Sheriff told Doug Lloyd that they would seize any cheque made payable to Mr. Hamilton under the provision of section 52 of the Court Order Enforcement Act. In fact, the necessitity to do so was avoided by Mr. Lloyd bringing a cheque into the Sheriff's office, made payable to the Minister of Finance".

Through all the contradictions listed above, it remains clear that the Sheriff accepted a cheque for $3710.00, as some form of payment for Mr. Hamilton's second skidder. Of this amount $210 went to tax, $353.01 to Sheriff commission and statutory fees, $2596.14 to the Board, and the balance of $550.85 to Island Finances.

Apparent grounds for finding #4, listed above

As previously stated, I have chosen in this letter to ignore many concerns raised in the investigation of this case. Thus at present I do not intend to argue the various reasons given as to whether the second skidder was ever seized, or whether the sheriff actually seized monies pursuant to section 52 of the Court Order Enforcement Act. As mentioned above, if necessary I will address that issue at a later date.

In my belief there may be sufficient grounds for the finding (numbered 4 above) that D/S Owens acted improperly in the receipt of monies for the second skidder, based only on the acknowledged fact that the money was paid by a man whom Mr. Hamilton had accused of stealing the skidder, and without any confirmation by Mr. Hamilton that this allegation had been withdrawn in favour of an agreement to sell for a certain price. Further, my arguments made earlier regarding the lack of apparent law authorizing the seizure and sale of Mr. Hamilton's equipment also apply, mutatis mutandis, to the second skidder.

Tentative recommendations

The facts and arguments made already, chronicle a series of horrors in the mind of Mr. Hamilton. He is without three pieces of equipment necessary if he is ever to resume operations; equipment for which he has bills of sale totalling over $78,000.00 which went to satisfy a debt of $6,000.00. To this I would add that he and Island Finances are left with an unsecured and unsatisfied debt originally contracted on the equipment. As of March 1983 the debt remaining was stated by Island Finances to be $64,000.00.

...7

I understand from Mr. Hamilton that his current debt to Island Finances on this chattel mortgage, is about $25,000.00. Approximately $40,000.00 has been paid off in the past year, mostly as a result of Mr. Hamilton's sale of logs stored at Forward Harbour. These were the same logs which both Sheriff Services and the Board declined to seize as they were not satisfied of Forward Sawmills Ltd.'s ownership.

In communicating my anticipated recommendations in this case I believe I must address not only the loss of equipment, but also the outstanding personal debt which had been secured by that equipment. Accordingly I may recommend that the Board and the Ministry jointly compensate Mr. Hamilton in such a manner that he is again in possession of the equipment necessary to ply his trade. Such compensation could be conditional on an agreement between the parties that Mr. Hamilton will undertake to secure that equipment to Island Finances, against his outstanding loan.

Alternatively, I may recommend that the Board and the Ministry jointly compensate Mr. Hamilton and Island Finances by the issuance of a monetary payment equal to the value of the equipment at the time of the compensation payment.

When he bought the equipment, Mr. Hamilton paid $78,600.00. At present we have no firm knowledge of its true market value at the time of the sheriff sale. The fact remains that Mr. Hamilton was not planning to sell the equipment. Its value to him rested in the knowledge that his company could resume work at any time when the economy permitted. Both he and Island Finances were withstanding a slump in the logging industry, waiting for better days to come, and with no plan to sell the equipment in order to cut their losses.

In making these tentative recommendations I have based my opinion on the apparent grounds outlined above. If the sale of the equipment was, in fact, contrary to law and could not proceed from the writs to hand, then my recommendation should look to reinstatement of the aggrieved parties to the position they were in prior to the unlawful act. Actual loss, by which I mean the value of the equipment at the time of the sale, is not a relevant factor if the sale itself was unlawful. Actual loss would, I contend, only be the relevant yardstick if the sale was lawful, but conducted in a negligent or otherwise improper manner.

In making these anticipated recommendations to the Board and the Ministry jointly, I have not given my views on their respective proportionate liability. That may be necessary at some future date if an agreement cannot be reached.

...8

Pursuant to section 16 of the Ombudsman Act, R.S.B.C. 1979, c. 306, I invite the written representations of the Board and of the Ministry, either jointly or severally, on or before February 28th, 1984. Should you require any further factual information before making your response, please contact my investigator, Dorothy Hayward. I am sending copies of this letter to Deputy Sheriff Owens and to Mr. Robertson, and invite them also to make written representations to my office, if they so choose.

Yours sincerely,

Karl A. Friedmann
Ombudsman

APPENDICES

1. Writs (3) of seizure and sale against Forward Sawmills Ltd.
2. Chattel mortgage between J.D. Hamilton and Island Finances Limited
3. Letter of Deputy Sheriff Owens, dated 09.12.82
4. Memo of Mr. Robertson, dated 16.12.82
5. Letter of Mr. Robertson, dated 21.01.83
6. Letter of Mr. Robertson, dated 31.01.83
7. Letter of Deputy Sheriff Owens, dated 28.02.83
8. Letter of Deputy Sheriff Owens, dated 08.04.83
9. Letter of Mr. Walker, dated 04.05.83
10. Proof of purchase of equipment (5 items).

VANCOUVER ISLAND

IN THE MATTER OF THE WORKERS' COMPENSATION ACT, BEING CHAPTER 437 REVISED STATUTES OF BRITISH COLUMBIA, 1948 AND AMENDMENTS THERETO

NANAIMO - 28 JAN 12 1981 REGISTRY

BETWEEN:

WORKERS' COMPENSATION BOARD

JUDGMENT CREDITOR

AND

FORWARD SAWMILLS LTD.

JUDGMENT DEBTOR

CERTIFICATE

This Certifies, in accordance with Section 45 of the above mentioned Act, that the Workers' Compensation Board, under the provisions of the said Act, has assessed the amount of $3,230.12 upon the judgment debtor herein; that $3,230.12 of the said assessment remains unpaid and that the said amount of $3,230.12 is now due and owing by the judgment debtor

FORWARD SAWMILLS LTD.

to the judgment creditor Workers' Compensation Board.

Given under the Seal of the said Board and the hand of the Secretary thereof this 7th day of January, 1981.

W. C. Kennett

Workers' Compensation Board

Secretary

Form 19[illegible]

Action No. [illegible]
NANAIMO REGISTRY

FORM 42 (RULE 42 (1))

IN THE COUNTY COURT OF VANCOUVER ISLAND

Between WORKERS' COMPENSATION BOARD , Judgment Creditor.

and FORWARD SAWMILLS LTD. , Judgment Debtor.

CAMPBELL RIVER
MAY 6 - 1982
REGISTRY

WRIT OF SEIZURE AND SALE

To the Sheriff:

You are commanded forthwith to seize and sell at public auction or by tender for the best available price sufficient of the goods and chattels of the undermentioned person to realize the sums set out on the back of this writ, which are payable by virtue of the attached order of this Honourable Court, together with your costs, fees, and expenses for executing this writ.

After carrying out the above instructions you shall pay to the person specified on the back of this writ from the amount realized the sum or sums that are payable to him and account therefor by return to the Court.

Registrar

Name and address of solicitor or person causing this writ to be issued:

G.W. Massing, Solicitor
5255 Heather Street
Vancouver, British Columbia
V5Z 3L8

Name and address of person whose goods and chattels are to be seized:

Forward Sawmills Ltd.
Box 328
Qualicum Beach, B.C.
VOR 2TO

Amount remaining due and payable on judgment: $3,230.12

Amount of costs remaining due and payable:

Amount of interest on judgment remaining due and payable: Five (5%) per annum from date of judgment

Sheriff's costs (to be filled in by Sheriff):

Total (to be filled in by Sheriff):

Identity of persons entitled to payment of judgment: Workers' Compensation Bo
5255 Heather Street
Vancouver, British Colu
V5Z 3L8

10:05am

IN THE COUNTY COURT OF VANCOUVER ISLAND

NANAIMO Registry

31

IN THE MATTER OF THE WORKERS' COMPENSATION ACT, BEING CHAPTER 437 REVISED STATUTES OF BRITISH COLUMBIA, 1979 AND AMENDMENTS THERETO

BETWEEN:

WORKERS' COMPENSATION BOARD

JUDGMENT CREDITOR

AND

FORWARD SAWMILLS LTD.

JUDGMENT DEBTOR

CERTIFICATE

This Certifies, in accordance with Section 45 of the above mentioned Act, that the Workers' Compensation Board, under the provisions of the said Act, has assessed the amount of $671.17 upon the judgment debtor herein; that $671.17 of the said assessment remains unpaid and that the said amount of $671.17 is now due and owing by the judgment debtor

FORWARD SAWMILLS LTD.

to the judgment creditor Workers' Compensation Board.

Given under the Seal of the said Board, and the hand of the Secretary thereof this 25th day of March , 1982.

N. C. Hamilton

Workers' Compensation Board

Secretary

Form 18E58

Action No. 6 4514
NANAIMO REGISTRY

FORM 42 (RULE 42 (1))

IN THE COUNTY COURT OF VANCOUVER ISLAND

- 32

Between WORKERS' COMPENSATION BOARD , Judgment Creditor.

FORWARD SAWMILLS LTD. , Judgment Debtor.

WRIT OF SEIZURE AND SALE

To the Sheriff:

You are commanded forthwith to seize and sell at public auction or by tender for the best available price sufficient of the goods and chattels of the undermentioned person to realize the sums set out on the back of this writ, which are payable by virtue of the attached order of this Honourable Court, together with your costs, fees, and expenses for executing this writ.

After carrying out the above instructions you shall pay to the person specified on the back of this writ from the amount realized the sum or sums that are payable to him and account therefor by return to the Court.

Registrar

Name and address of solicitor or person causing this writ to be issued:
G.W. Massing, Solicitor
5255 Heather Street
Vancouver, British Columbia
V5Z 3L8

Form 1PE44

Name and address of person whose goods and chattels are to be seized:

Forward Sawmills Ltd.
Box 328
Qualicum Beach, B.C.
VOR 2TO

Amount remaining due and payable on judgment: $671.17

Amount of costs remaining due and payable:

Amount of interest on judgment remaining due and payable: Five (5%) per annum from dat of judgment

Sheriff's costs (to be filled in by Sheriff):

Total (to be filled in by Sheriff):

Identity of persons entitled to payment of judgment: Workers' Compensation
5255 Heather Street
Vancouver, British Col
V5Z 3L8

10:05 am

ction No. 34

IN THE COUNTY COURT OF VANCOUVER ISLAND NANAIMO Registry

IN THE MATTER OF THE WORKERS' COMPENSATION ACT, BEING CHAPTER 437 REVISED STATUTES OF BRITISH COLUMBIA, 1979 AND AMENDMENTS THERETO

NANAIMO
OCT 7 - 1980
REGISTRY

BETWEEN: WORKERS' COMPENSATION BOARD

JUDGMENT CREDITOR

AND FORWARD SAWMILLS LTD.

JUDGMENT DEBTOR

CERTIFICATE

This Certifies, in accordance with Section 45 of the above mentioned Act, that the Workers' Compensation Board, under the provisions of the said Act, has assessed the amount of $2,575.19 upon the judgment debtor herein; that $2,575.19 of the said assessment remains unpaid and that the said amount of $2,575.19 is now due and owing by the judgment debtor

FORWARD SAWMILLS LTD.

to the judgment creditor Workers' Compensation Board.

Given under the Seal of the said Board, and the hand of the Secretary thereof this 30 day of September, 1980.

N. C. Atherton

Workers' Compensation Board

Secretary

Form 1Pr59

NANAIMO REGISTRY

35

FORM 42 (RULE 42 (1))

IN THE COUNTY COURT OF VANCOUVER ISLAND

Between

WORKERS' COMPENSATION BOARD , Judgment Creditor.

and

FORWARD SAWMILLS LTD. , Judgment Debtor.

CAMPBELL RIVER
MAY 6 - 1982
REGISTRY

WRIT OF SEIZURE AND SALE

To the Sheriff:

You are commanded forthwith to seize and sell at public auction or by tender for the best available price sufficient of the goods and chattels of the undermentioned person to realize the sums set out on the back of this writ, which are payable by virtue of the attached order of this Honourable Court, together with your costs, fees, and expenses for executing this writ.

After carrying out the above instructions you shall pay to the person specified on the back of this writ from the amount realized the sum or sums that are payable to him and account therefor by return to the Court.

Registrar

Name and address of solicitor or person causing this writ to be issued:

G.W. Massing, Solicitor
5255 Heather Street
Vancouver, British Columbia
V5Z 3L8

Form 18E44

Name and address of person whose goods and chattels are to be seized:

Forward Sawmills Ltd.
Box 328
Qualicum Beach, B.C.
VOR 2TO

Amount remaining due and payable on judgment: $2,575.19

Amount of costs remaining due and payable:

Amount of interest on judgment remaining due and payable: Five (5%) per annum from date of judgment

Sheriff's costs (to be filled in by Sheriff):

Total (to be filled in by Sheriff):

Identity of persons entitled to payment of judgment: Workers' Compensation Bo
5255 Heather Street
Vancouver, British Colum
V5Z 3L8

10:05am

Firm No. 239186-142
Action No.
NANAIMO REGISTRY

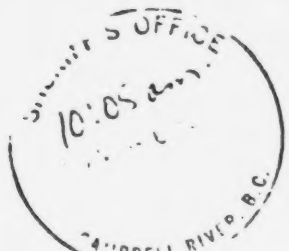
BETWEEN:

WORKERS' COMPENSATION BOARD
JUDGMENT CREDITOR

AND: FORWARD SAWMILLS LTD.
JUDGMENT DEBTOR

CERTIFICATE

G.W. Massing, Solicitor
Workers' Compensation Board
5255 Heather Street
Vancouver, British Columbia
V5Z 3L8



"A"

INLAND FINANCES LIMITED
CHATTEL MORTGAGE

Contract No. [illegible]

THIS INDENTURE made (in duplicate) the 18th day OF JANUARY in 80

BETWEEN JAMES D. HAMILTON,

of Box 326, QUALICUM BEACH, BRITISH COLUMBIA

(hereinafter referred to as the Mortgagor) of the one part and

INLAND FINANCES LIMITED,

of 764 Fort Street, VICTORIA, BRITISH COLUMBIA

(hereinafter referred to as the Mortgagee) of the other part, WITNESSETH that in consideration of the sum of Forty nine thousand nine hundred and twenty and 00/100 Dollars ($ 49,920.00) of lawful money of Canada now paid by the Mortgagee to the Mortgagor (the receipt whereof is hereby acknowledged by the Mortgagor) the Mortgagor hereby grants unto the Mortgagee the property described in the description of chattels hereinafter set forth.

SCHEDULE OF PAYMENTS
(Use note for other than equal monthly payments)

Pay't. No.	Date Due	Amount $	¢

Pursuant to the Consumer Protection Act the cost of borrowing is hereafter set forth
(Not applicable for finance for industrial and commercial enterprises)

SUM BORROWED	$ 49,920.00
Total Finance Charges calculated at per annum	$ 8,925.00
Registration Charge	$ 10.00
Life Insurance Cost for months (optional)	$ 145.00
TOTAL DEFERRED BALANCE (amount of note)	$ 59,000.00

Payable in one instalment of $ 5,000.00 and 16 instalments of $ 3,375.00 each, payable on the same day of each successive month and commencing one month from the date hereof OR commencing on 18th day of FEBRUARY, 1980 or as indicated in Schedule of Payments

DEFAULT CHARGES
Late payments carry interest at 18% per annum after due date to date of payment. Disbursements normally incurred in collecting late payments or in collecting the deferred balance when due will be added to the deferred balance.

DESCRIPTION OF CHATTELS SCHEDULE

MOUNTAIN LOGGER Skidder Model #200 Serial # ML200-73166 ✓
MOUNTAIN LOGGER Skidder with CLARKE Winch Model ML200 Serial # 73181 ✓
BERGER 90' Forta Logging Tower - Mounted on
BERGER Tandem Trunk Serial # 56427 ✓
with - BERGER 3 Drum Yarder Serial # BD-228-FAM ✓
equipped with - CUMMINS Diesel Engine Serial # HB220-81
and Extra BERGER 90' Forta Logging Tower

CATERPILLAR Dozer Model D6 14A Serial # 14A1107
with - ROPS Canopy and Kyster D6L Winch

Inboard Cruising Boat "MY JOE" - equipped with 125 BHP 471 G.M. Diesel Engine
Motor Vessel License # 25M2665

West Coast Winder "SEA MAX IX" Official # 328644

(5)

Fifty nine thousand and 00/100 $ 59,000.00

[illegible]

REGISTERED AT CENTRAL REGISTRY VICTORIA, B.C. JAN 31 1980

Witness [illegible]

James D. Hamilton

Raymond E. Bertels

24 January 80

[redacted]

AFFIDAVIT OF BOOK'S TITLE BY INDIVIDUAL
(To be used in the Province of British Columbia)

I, Raymond E. Bertois
of the City of Victoria
in the Province of British Columbia, [redacted]

MAKE OATH AND SAY:

1. THAT the [redacted] mentioned in Exhibit "A" to the Bill of Sale by way of Mortgage, and being the [redacted] described in the [redacted] mentioned or referred to in the said Bill of Sale, [redacted] James D. Hamilton

2. THAT the said Bill of Sale by way of Mortgage was made and given by the said James D. Hamilton
on the 18th day of January A.D. 19[redacted]

3. THAT I was present and did see the said James D. Hamilton in the said Province of British Columbia, and whose name is signed thereto, sign and execute the same on the said 18th day of January in the County aforesaid,

4. THAT the said James D. Hamilton of the [redacted] of Victoria and [redacted] Box 328, Qualicum Beach, B.C.
and who was and still is a Logging Contractor

5. THAT the name Raymond E. Bertois [redacted] and subscribed to the witness attesting the due execution thereof, is of the proper handwriting of me, this deponent, and that I reside at 3900 Robbs Road,
Victoria, B.C. and am a Manager

SWORN before me at the City of Victoria, in the Province of British Columbia, this 24 day of January A.D. 1950

R. Bertois.

A Commissioner for taking Affidavits within British Columbia
A Notary Public within British Columbia

AFFIDAVIT OF EXECUTION FOR COMPANY (B.C.)
"BILL OF SALE ACT"

I, [redacted] of the City of [redacted] in the Province of British Columbia, [redacted] of the [redacted] mentioned and described in the [redacted] mentioned or referred to in the [redacted] Bill of Sale, [redacted] and made and given by the said [redacted]

2. THAT I am the [redacted] of the said corporation, the Mortgagee, being duly authorized so to do, did affix the seal of the said corporation to the said Bill of Sale, did sign the said Bill of Sale as the [redacted] of the said corporation, and did duly deliver the said Bill of Sale as the act and deed of the said corporation on the [redacted] day of [redacted] 19[redacted]

3. THAT the head office or chief place of business of the said corporation in British Columbia is situate at [redacted] in the said Province

SWORN before me at the City of [redacted] in the Province of British Columbia, this [redacted] day of [redacted] A.D. 19[redacted]

A Commissioner for taking Affidavits within British Columbia
A Notary Public within British Columbia

COURT SERVICES

Campbell River
British Columbia
V9W 6P1
Telephone 287 9138

December 9, 1982

Mr. K. Robertson,
Assistant Supervisor, Collections,
Workers Compensation Board,
5255 Heather St..,
Vancouver B.C.
V5Z 3L8

Dear Sir;

Re: Writ of Seizure And Sale _ W.C.B. vs Forward Sawmills Ltd
Your File # 239186-142

With reference to our conversation at the Campbell River Sheriff's office December 7/82 I am writing for clarification of the boards policy on seizure and sale of goods that on the face belong to a Director of a company in default to the board.

In the case of Forward Sawmills Ltd. the only proof of ownership we have regarding the D-8 Cat and the HL200 Mountain Logger Skidder is a copy of a chattel morgage(attached) between Island Finance Limited and James David Hamilton. Mr Hamilton is a Director of Forward Sawmills Ltd. and admits to using the equipment to log the claim for which the lien was created in favor of the board. Our interpitation of section 52 of the Worker Compensation Act was our total reason for seizing the equipment listed above. I understand from talking to you that the board does in fact take a different position involving matters such as this. Therefore I would ask for a reply as to the boards policy regarding section 52 of the Workers Compensation Act and specific instructions as to what you want done with the equipment currently under seizure at Forward Harbour.

Yours Truly

Robert Owens
Deputy Sheriff
Campbell River B.C.

MEMORANDUM

TO: G.W. Massing
Legal Services

December 16, 1982

RE: Forward Sawmills Ltd.
Firm No. 239186-142
Writ of Seizure and Sale

Subject company owes the Board $6,396.48 for unpaid assessment relating to the years 1979 and 1980.

The subject account is presently in the hands of the Campbell River Sheriff's Office by virtue of Writs of Seizure and Sale issued by the Board. The Sheriff consequently has made a seizure against a D-8 Cat and M.L. 200 Mountain Logging Skidder.

The subject equipment is believed to be owned by the principal of the company who has freely admitted that the equipment was used in or for the business operated by Forward Sawmills Ltd. The Sheriff's seizure was made based on their understanding that they were permitted to do so in accordance with the provisions of Section 52 of the Workers' Compensation Act.

The Sheriff's office advised that in addition to having made a seizure, they have a prospective buyer interested in purchasing the two pieces of equipment in question. The writer recently visited the Campbell River Sheriff's Office and discussed the matter of this outstanding Writ with the Sheriff's Deputies. It was indicated by the writer to the Sheriff's office that our policy has been that Section 52 of the Act grants the Board a lien against property owned by a director, principal or shareholder of the company, where used in the business, however, did not permit the Board the right to seize equipment on the strength of this Section of our Act.

. 2

TO: G.W. Massing - 2 - December 16, 1982
PE: Forward Sawmills Ltd.

In view of the amount outstanding and the circumstances I would request that you endeavour to obtain an Order for Sale of the equipment belonging to the principal of the subject company on the basis of Section 52(2) of the Act.

Regardless of the outcome of such an action, I think it is a worthwhile exercise to test the strength of this particular section of the Act.

Thank you for your anticipated cooperation in this matter.

Yours very truly,

K.G. Robertson
Assistant Supervisor,
Collections Section,
Assessment Department

KGR/vm

COMPENSATION
BOARD
6951 Westminster Highway,
Richmond, B.C.
V7C 1C6
Telephone 273 2266
Telex 04-357722

The Sheriff's Office,
500 - 13th Avenue,
Campbell River, B. C.
V9W 6P1

January 21, 1983

Attention: D/S R. Owens

Dear Sirs:

Re: Workers' Compensation Board vs.
Forward Sawmills Ltd.,
Firm No. 239186-542.

This letter is further to the writer's recent telephone discussion with Deputy Sheriff Owens, of your office, concerning the Board's Writ of Seizure and Sale against the subject defendant.

It is our understanding that you have endeavored to locate a potential buyer for equipment presently under seizure, belonging to the subject firm, on a by word of mouth method of advertising. It is our further understanding that you have secured an offer for purchase of the equipment in question and that the subjectoffer is considered to be well below current market value.

Whereas the Board has forwarded the sum of $2,500.00 to your office as a costs advance in addition to the face value of our action, we agree that it would be desirable to obtain a sum for the equipment in question which not only cover the cost advance and Sheriff's costs but would also produce at least a substantial portion for application to the Writ amount. Consequently, we would agree that the subject equipment should perhaps be advertised via your local news publications for a period not exceeding two weeks.

...../cont.

The Sheriff's Office. January 21, 1982

At such time as this advertising has lapsed and any subsequent offers for purchase been received, then appropriate steps taken to sell the equipment to the highest bidder.

We trust this is the information that you require and we look forward to your further advice.

Yours very truly,

K. G. Robertson,
Assistant Supervisor,
Collections Section,
Assessment Department.

KGR:dk

6951 Westminster Highway,
Richmond, B C.
V7C 1C6
Telephone 273 2266
Telex 04-357722

The Sheriff's Office,
500 - 13th Avenue,
Campbell River, B. C.
V9W 6P1.

January 31st, 1983.

Attention: D/S R. Owens.

Dear Sirs:

Re: Workers' Compensation Board
vs.
Forward Sawmills Ltd.
Firm No. 239186-542.

This letter is further to our letter dated January 21st, 1983 and the writer's subsequent telephone discussion of January 25th, 1983 with Deputy Sheriff Owens, of your office, concerning the above captioned firm.

It is our understanding that you have now been successful in securing a purchase offer in the amount of $6,000.00 on an as is where is basis, of all equipment belonging to the subject firm and presently subject to seizure.

It is our further understanding that in your opinion it is unlikely that additional advertising or removal of the equipment from Forward Bay is likely to obtain any higher price for the equipment in question.

Accordingly, we would agree that the present offer to purchase be accepted and applied against the Board's Writ and related costs.

We trust this is the information that you require and we thank you for your co-operation in this matter.

Yours truly,

K. G. Robertson,
Assistant Supervisor,
Collections Section,
Assessment Department.

KGR:bl

COURT SERVICES

Campbell River
British Columbia
V9W 6P1
Telephone 287 9138

46

February 28, 1983

File #22919

Mr. Roy Bertoia
Island Finance Limited
P.O. Box 338
Victoria, B.C.
V8W 2N6

Dear Sir;

RE: Worker's Compensation Board vs. Forward Sawmills Limited

Further to my letter of February 8th, 1983 this letter will confirm that Sheriff Services of Campbell River, acting on a Writ of Seizure & Sale in favour on the Workers Compensation Board, on February 17, 1983 also sold;

One (1) Mountain logger Skidder, ML 200, Serial Number 73181.

Yours truly,

Robert Evens,
Deputy Sheriff

RO/miv

COURT SERVICES

Telephone 387-9138

April 8th, 1983.

Our File No. 22919

Mr. J.E.D. Savage,
Crease & Company,
Barristers & Solicitors,
800 Bentall Building,
1070 Douglas Street,
P.O. Box 997,
Victoria, B. C.,
V8W 2S8.

Workers' Compensation Board vs. Forward Sawmills Ltd.

In reply to your letter dated March 10th, 1983, the Mountain Logger skidder ML200, serial number 73181, was never seized and brought into possession of Sheriff Services. After this skidder was taken from Forward Sawmills, I received a call from Mr. Hamilton asking if we had sold that particular piece of equipment along with the other two pieces that had been seized in July, 1982. I told him that we hadn't seized that piece of equipment but I would telephone Mr. Lloyd (the successful bidder on the other equipment) and ask him if he did take the second skidder in question. At that time Mr. Hamilton was advised that if he was considering charges, he should contact the R.C.M. Police. When I contacted Doug Lloyd, he confirmed that he had the second skidder and was trying to contact Mr. Hamilton with an offer to purchase it. I told him at that time that any monies paid on the skidder would have to be paid to our office to be applied to the outstanding amount of the Writs held in our office. Subsequently, we accepted $3,500.00 from Lloyd on the skidder, which we believed to be fair market value due to the fact that the second skidder had no wheels on it, no transmission and was totally inoperatable.

Regarding the sale of the other two pieces of equipment, they were advertised in the Campbell River Mirror and Upper Islander on January 19, 1983 and in the Campbell River Courier on January 21, 1983 (copy enclosed). The sale was by sealed bid and there were two bids received. We do not have the copies of the Writs on hand as they were returned to the Registry in Nanaimo. We have requested by telephone that they forward a copy of the Writs to you.

. . . /2

J.E.D. Savage,
Crease & Company

April 8th, 1983.

I trust I have answered your concerns and if you have any further questions regarding this matter, please contact me and I would be happy to assist you.

Robert Owens,
Deputy Sheriff II.

RO:jel

Encls.

c.c. Mr. Roger Walker, Legal Officer, Court Services Headquarters.

c.c. Mr. Harold Doucette, District Manager, Court Services.

File: S260-3 May 4, 1983

Crease & Company
Barristers and Solicitors
800 Bentall Building
1070 Douglas Street
Victoria, B.C.
V8W 2S8

Attention: J.E.D. Savage, Esq.

Re: Island Finances Limited, Workers Compensation Board, Forward Sawmills Ltd. and James D. Hamilton
Your file: 6317%

Dear Sir:-

Your letter of the 17th of April addressed to Deputy Sheriff Robert Owens in Campbell River has now been referred to me.

I have read the file carefully and discussed the matter at length with Deputy Sheriff Owens and as I understand it the Deputy Sheriff told Doug Lloyd that they would seize any cheque made payable to Mr. Hamilton under the provisions of section 52 of the Court Order Enforcement Act. In fact, the necessity to do so was avoided by Mr. Lloyd bringing a cheque into the Sheriff's office made payable to the Minister of Finance.

As you know section 52 of the Workers Compensation Act gives the WCB priority "over other liens or charges" and that would include the chattel mortgage in favour of your client.

Under the circumstances I cannot see that Deputy Sheriff Owens was in any way a party to what you consider to be Mr. Lloyd's unlawful conversion of the skidder nor has he unlawfully converted any funds.

Yours truly,

Roger D. Walker
Barrister and Solicitor

cc: D/S Robert Owens

FERGUSON SUPPLY LTD.

A KENDAVIS INDUSTRIES COMPANY

1 CALGARY ALBERTA
2 EDMONTON ALBERTA
3 GRANDE PRAIRIE ALBERTA
6 COLEMAN ALBERTA
7 KAMLOOPS BRITISH COLUMBIA
8 SURREY BRITISH COLUMBIA
9 PRINCE GEORGE BRITISH COLUMBIA
0 CAMPBELL RIVER BRITISH COLUMBIA

SALES AGREEMENT

SALES ORDER NO. | CODE: ce | No 2499

SELLING BRANCH: Campbell River

CUSTOMER ORDER NO:

SHIP TO:

J.D. Hamilton
Box 328 Qualicum Beach

50

QTY.	SERIAL NUMBER	DESCRIPTION	AMOUNT
24	73181	Used ML200 Mountain Logger	37000 00

PRICE INCL. SALES TAX | Incl | Exempt

TRADE IN

		Used 545 AC Front End Loader	20,500 00

NET SELLING PRICE: 16,500 00

PROVINCIAL SALES TAX: 460 00

TOTAL NET PRICE: 17160 00

CONDITIONS OF SALE

1. Title to the goods or equipment does not pass to the Buyer upon delivery but shall remain in the Seller at Buyer's risk until the entire purchase price, interest, and all costs are paid in cash.

2. At any time prior to payment in full of the purchase price and interest of any the Seller may, with or without legal process, take possession of the goods or equipment and for that purpose may enter forcibly or otherwise any premises where the goods are and may concurrently bring suit against the Buyer for the balance unpaid.

3. Goods or equipment as described in this contract shall include all attachments, accessories and replacements added to the goods and equipment after sale. Goods shall remain personal or movable property and shall not form part of any realty even though attached to it. The Buyer will not remove the goods or equipment from the province or territory in which he resides at the time of delivery until payment has been made in full nor will he surrender them to any other person or permit any lien to be placed against them.

4. Seller may recover by action at law possession of the goods or equipment in addition to concurrently with or after the exercise of any other rights of the Seller. Loss, injury or destruction of the goods or equipment after delivery shall not release the Buyer from his liability.

5. After repossession the Seller may with or without notice sell the goods or equipment by private or public sale and the Seller may buy at any such sale. The price received shall be applied first to the costs incurred by the Seller for repossession, storage, repair and sale and the balance, if any, shall be applied against the amount due under this contract.

6. The Seller will deliver the goods or equipment described unless prevented by strikes or other labour disputes, acts of God or other causes beyond the control of the Seller. Buyer accepts the manufacturer's written warranty (if any) for the goods or equipment and the Seller makes no warranty of any kind as to merchantability or otherwise. Seller has made no warranty or representation as to suitability of the goods or equipment for any particular purpose.

7. The Buyer shall at his (its) own expense provide insurance in the name of the Seller and Buyer in an amount satisfactory to the Seller (including a loss payable endorsement) against liability for bodily injuries including death and or property damage arising from all use of the equipment and to protect the Seller against all loss or damage to the equipment to the value stated in the Description in Detail. Proof of insurance shall be delivered to the Seller prior to delivery date. All licenses or permits required to operate said equipment are the responsibility of the Buyer.

8. This contract contains the entire agreement between the Seller and the Buyer and there are no other agreements, express or implied.

9. Any provision of this contract prohibited by the law of any province shall as to that province only be ineffective to the extent of such prohibition and without invalidating the remaining conditions. If the Buyer is a corporation it agrees that Sections 14, 14A, 14B and 14C of the Conditional Sales Act of the Province of British Columbia and Section 19 of The Conditional Sales Act of the Province of Alberta shall have no application whatsoever to this agreement and all protection extended thereby is hereby waived.

The Buyer has received a copy of this Order. See warranty conditions on reverse for customer signature.

Signed at _____ this _____ day of _____ 19____

Signature of Buyer: J.D. Hamilton

Address in full _____

Order received by _____ Salesman

Order accepted by Kimmel for Seller

CUSTOMER'S COPY ACCEPTED CONTRACT Dec Aug 31 79 19____

51

FERGUSON SUPPLY 1970 LTD.

J. D. Mc Ilton

Box 220

Qualicum Beach, B. C.

MAKE	MODEL	SERIAL NUMBERS
Allis Chalmers	545	[illegible]

QUAN	DESCRIPTION	UNIT PRICE
1	Cr. 175	545 Allis Chalmers Front End Loader [illegible]
	TRADE IN	

CREDIT NOTE

SALES TAX ALLOWANCE

TOTAL CREDIT 20.50

FERGUSON SUPPLY LTD. PHONE 253 0481 — 2120 BLACKFOOT TRAIL S.E. — CALGARY, ALTA. T2X 1X

INVOICE DATE Aug 1, 1979

TO
- J. D. Hamilton
- Box 339,
- Qualicum Beach, B. C.
- Forward Harbour

DATE ORDER SHIPPED

CUSTOMER'S ORDER NO. 52

PROJECT NUMBER

SALES ORDER NO.

VIA

TERMS — NET
A Service Charge of 1½% Per Month (18% Per Annum) Will Be Made On Past Due Accounts

NO.	SERIAL NUMBER	NEW USED — MAKE & MODEL — DESCRIPTION — SPECIAL EQUIPMENT	EXTENSION	
1	72191	Used 120 Mountain Logger c/w Clarke Winch	37,[illegible]	[illegible]
1976				
		4% B. C. Tax on Net of $16,5[illegible].00 x 4%	66[illegible]	00
			37,66[illegible]	00

RANTY SUBJECT TO
DITIONS ON BACK
AS NOTED HEREON

FEDERAL SALES TAX: EXEMPT [ ] INCLUDED [ ] NOT APPLICABLE [ ]
EXEMPTION FROM TAXES IS EXTENDED TO YOU WITHOUT PREJUDICE TO OURSELVES TO CHARGE YOU WITH TAXES AT ANY SUBSEQUENT DATE SHOULD THE TAXING AUTHORITIES DETERMINE THAT THE MATERIAL COVERED BY THIS INVOICE IS TAXABLE

ICE BER BRANCH CODE No S1477

PLEASE PAY THIS TOTAL

A COMPLETE CONSTRUCTION EQUIPMENT SALES AND RENTAL SERVICE

184 5651 -- 16830 - 111th AVE. EDMONTON, ALTA. T2M 2S5
532 8897 -- 11012 - 98th AVENUE GRANDE PRAIRIE, ALTA. T8V 3A1
582 2480 -- P.O. BOX 249, BLAIRMORE, ALTA. T0K 0E0
743 4135 -- P.O. BOX 5652 FT. McMURRAY, ALTA. T9H 3G8
PHONE 525 5411 — 2370 CAPE HORN AVE. COQUITLAM, B.C. V3K 1J8
PHONE 562 7271 — 1001 GREAT STREET PRINCE GEORGE, B.C. V2N 2K8
PHONE 287 8921 — 2011 - 16th AVENUE CAMPBELL RIVER, B.C. V9W 4J2
PHONE 372 8134 — 459 MOUNT PAUL WAY KAMLOOPS B.C. V2H 1A7

PLEASE REMIT TO US AT COQUITLAM, B.C. OR P.O. BOX 5160, STATION "A", CALGARY, ALTA. T2X 1X3

Coast Tractor & Equipment Ltd.

ISLAND EQUIPMENT LTD..

SALES ORDER

P O BOX 718
NANAIMO, B C.
PH 754-7735

1741 - 14TH AVE
CAMPBELL RIVER, B C.
PH 286-1333

1074 GOLDSTREAM AVE
VICTORIA, B C.
PHONE 478 9535

REGISTER NO

R ☐ CASH ☐ DEPOSIT

W ☐ CREDIT ☐

DOWN PAYMENT
CASH
TRADE
TOTAL

CREDIT APPROVAL

(ALL SALES ARE SUBJECT TO SERVICE AND WARRANTY CONDITIONS ON REVERSE SIDE)

SOLD TO (PRINT) J D Hamilton

ADDRESS (PRINT) Box 328
Qualicum Beach V0R 2T0

SHIPPING INSTRUCTIONS

FRT PPD ☐
FRT COLL ☐
F O B Campbell River

INVOICE NO

YOUR ORDER NO

PURCH ORDER NO

SHOP ORDER NO

CUST TEL NO 752-9491

DATE WRITTEN Jan. 15 19 80

DATE SHIPPED 19

SHIPPED FROM

BRANCH Nanaimo

SALESMAN J Sanderson

TERMS ON BALANCE Cash

CUSTOMER'S BANK

INSURANCE COVERAGE

PAYOUT ON TRADE-IN $

PAYOUT DUE TO

SHIPPED CHECK	QTY	MODEL/PART NO	DESCRIPTION	SERIAL NO	PRICE	TOTAL	FOR OFFICE USE ONLY
	1	D8	Caterpillar Dozer	14A4101		16000 00	
			c/w ROPS Canopy				
			Hyster D8L Winch				
			As Is. Where Is.				
			PRICE SUBJECT TO INCREASE.				
			PRICE PREVAILING AT TIME OF DELIVERY WILL APPLY.				
			ALLOWANCE				

EST APPR. R A NO EST S P

ORDER AUTHORIZED AND SERVICE AND WARRANTY CONDITIONS ON REVERSE SIDE ACKNOWLEDGED.

X CUSTOMER

THIS ORDER IS NOT BINDING ON THE PART OF ISLAND EQUIPMENT LIMITED UNTIL ACCEPTED BY THE MANAGEMENT.

ACCEPTED BY

TOTAL	16000 00
USED FOR	
FED SALES TAX EXEMPTION APP'D ☐	
SS & MA SALES TAX	600 00
TOTAL	16600 00

R.O.P.S. NOT SUPPLIED AT PURCHASER'S REQUEST

WHITE - Office Copy, YELLOW - Customer Copy, PINK - Customer File, GOLD - Service Department

ROSEDALE MACHINERY SALES LTD.

P.O. BOX 100 — V0X 1X0 — ROSEDALE, B.C.
TELEPHONE 794-7121 VANCOUVER 534-2374

RMS UNIT No. _____

The undersigned Vendor sells and the undersigned Purchaser (which means all purchasers jointly and severally) purchases and covenants to pay for subject to the terms and conditions hereof the following PROPERTY receipt of which in good order and condition is hereby acknowledged by the Purchaser namely

PURCHASER'S NAME

(1st Name and Initial)	(Use Block Letters)	Surname
	J. D.	HAMILTON

(Full Address (use block letters)) PHONE

BOX 320 UCLUELET B.C. 752 9491

QUAN.	NEW OR USED	MODEL	TRADE NAME AND DESCRIPTION	SERIAL NUMBER	CASH PRICE PER UNIT	TOTAL PRICE
1	Used	200	Mountain Logger Skidder	ML200-73166		26,000.00

F.O.B. NAKUSP, B.C.

DESCRIPTION OF TRADE IN

ro Quip Speed-drill
nk-mount M4 s/n e/)

FEDERAL SALES TAX PAID ☐ YES ☐ NO

A.F. OF DELIVERY F.O.B. VENDOR'S PLANT

A.F. ALLOWANCE $

TOTAL AMOUNT $

TO BE PAID ON ACCOUNT $

NET TRADE IN ALLOWANCE $

(1) TOTAL CASH DELIVERED PRICE	$ 26,000.00
LESS - NET TRADE IN ALLOWANCE	$ 22,000.00
= SUB TOTAL	$ 4,000.00
PROVINCIAL SALES TAX (7% of Sub Total)	$ 280.00
= SUB TOTAL	$ 4,280.00
LESS - CASH DOWN PAYMENT	$
= BALANCE OF CASH PRICE	$
OTHER	$
UNPAID BALANCE	$ 4,280.00
(ins. Agent Name	
Phone ____ Town ____	
FINANCE CHARGE	$
DEFERRED BALANCE	$

Unpaid balance is payable in cash on delivery of the property. If the Vendor agrees that the unpaid balance need not be paid at the time of delivery of the property, the unpaid balance together with the foregoing finance charge shall be paid as follows: In ____ instalments and ____ instalments of $ ____ each payable on the same day of each successive month and ____ day of each month from the date hereof OR commencing on ____ day of ____ 197

SPECIAL INSTRUCTIONS: Balance to be financed at Island Finance, Victoria, B.C.

Contact Ray Bertoi - 386-6381

WARRANTY OR GUARANTEE (If neither state so clearly)

THIS ORDER is given and accepted subject to all the terms and conditions printed on the back hereof, and is not binding on the Vendor until accepted by one of its officers. Purchaser acknowledges having received a true copy of this agreement at time of signing.

Dated at Vancouver (City or Town) B.C. (Province) this 14 day of March 1978

VENDOR'S SIGNING AREA

ROSEDALE MACHINERY SALES LTD.

Submitted by

Salesman

Accepted by

PURCHASERS AND WITNESS SIGNING AREA

Purchaser(s) sign below on ink

Purchaser's Corporate Name (If applicable)

Signatures and titles of authorized officials By

By

Witness to Purchaser's signature (salesman)

By

Release No. _____ Delivery of the above property is hereby acknowledged this _____ day of _____ 197_

_____ Customer Signature

FOR COMPLETION CHECK LIST — SEE OVER

Mar. 1976

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 83 50440
83 50723

March 6, 1984

Mr. W. Flesher
Chairman
Workers' Compensation Board
6951 Westminster Highway
Richmond, B.C.
V6C 1C6

E.N. Hughes, Q.C.
Deputy Attorney General
5th Floor - 609 Broughton Street
Victoria, B.C.
V8V 1X4

Your File 0140-3
(Hamilton - John)

Gentlemen:

I have recently received the enclosed letter from Island Finances Limited. As you will see, it relates to interest payable by Mr. John Hamilton to Island Finances, on his loan. Although this loan was secured against more than the three items seized by Sheriff Services on behalf of the Workers' Compensation Board, the total amount owing was less than the purchase price of those three items.

Island Finances chose to "stop the clock" on Mr. Hamilton's interest on the day on which they were informed of the seizure by Sheriff Services. That is, they have not pursued Mr. Hamilton for this debt. In fact the Manager, Mr. Bertoia, expressed to my investigator his opinion that Mr. Hamilton could not be held liable, ethically, for this debt, despite any legal obligations he may have.

As the enclosed letter is somewhat unclear, I will provide Mr. Bertoia's explanation to my investigator. Large principal payments were made by Mr. Hamilton on September 14, 1983 (from the sale of timber) and February 21, 1984 (from the sale of his lease). Thus the principal owing has been reduced to $2,956.15. Interest owing, though not at this point billed to Mr. Hamilton, exceeds $19,000.00 since the date of seizure.

...2

I am forwarding this information for your consideration in any representations you make to my letter of February 14th, 1984. I would anticipate that any formal recommendations I may make regarding compensation owed to Mr. Hamilton and Island Finances, jointly or severally, would include recognition of those costs outlined in Mr. Bertoia's letter.

Yours sincerely,

Dr. Karl A. Friedmann
Ombudsman

Enclosure

RECEIVED
OFFICE OF THE OMBUDSMAN
VICTORIA

764 Fort Street, Victoria, B.C.

Victoria over 80 years • Locally owned and operated • Phone 386-6351 • Mailing Address - P.O. Box 338, Victoria, B.C., V8W 2N6

February 28, 1984

Ombudsman,
8 Bastion Square,
Victoria, B.C.
V8W 1H9

Attention: Dorothy Hayward

Dear Madam:

Re: our acc.#2538-J. D. Hamilton

Further to our conversation, the statement set out below shows the balance of our account and the amount of interest outstanding since Mr. Hamilton's equipment was seized by the Workers' Compensation Board around the 1st of August, 1982.

Balance as of August 15th, 1982		$63,914.00
Interest for this period.	$16,617.64	
Balance as of September 14, 1983		$24,350.00
Interest for this period.	$2,435.00	
Balance as of February 21,1984		$2,956.15
Total Interest	$19,052.64	$19,052.64
Total Balance owing		$22,008.72

For your own information, this is to advise that the cost for us to obtain this funding for that same period was $10,296.97.

We trust that this is the information you require to assess what our claim against the Workers' Compensation might be.

Yours very truly,

R. Bertola

Manager

R. E. Bertola/aa
e. & o. e.

Delivered by hand.

COMPLETE FINANCE PLANS COVERING PURCHASES OF AUTOMOBILES, TRUCKS, HOUSEHOLD APPLIANCES, COMMERCIAL AND INDUSTRIAL EQUIPMENT

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 83 03941

Your File 0140-3
(Hamilton)
March 6, 1984

E.N. Hughes, Q.C.
Deputy Attorney General
5th Floor - 609 Broughton Street
Victoria, B.C.
V8V 1X4

Dear Mr. Hughes:

I am in receipt of your letter of February 28th regarding my complainant, Mr. John Hamilton.

I appreciate that my letter of February 14th raised many complex issues. I note, however, that your Ministry has been aware of my involvement in this case since February 23rd, 1983. Therefore it seems reasonable to me to expect that you or your staff have already investigated the facts of this issue.

I trust that you will be able to respond fully by your proposed date of March 15th, 1984.

Yours sincerely,

Dick Cooper
for Karl A. Friedmann
Ombudsman

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

59

File No: 83 50440
83 50723

March 16, 1984

Mr. George H. Copley
Barrister & Solicitor
Government Operations
Civil Law Division
Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4

Dear Mr. Copley:

I am writing to confirm our conversation of yesterday regarding the complaint of Mr. John Hamilton of Forward Sawmills Ltd.

On behalf of the Ombudsman I agree to extend to March 30th, 1984 the period in which representations may be made in the matter under section 16 of the Ombudsman Act.

Yours sincerely,

Rick Cooper
Director of Investigations

cc: E.N. Hughes, Q.C.
Deputy Attorney General

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H4
Telephone (604) 387-5855
Zenith 2221

File No: 83 50449
83 50723

March 6, 1984

Mr. W. Flesher
Chairman
Workers' Compensation Board
6951 Westminster Highway
Richmond, B.C.
V6C 1C6

Dear Mr. Flesher:

I have received no response to date to my letter of March 14th regarding my complainant Mr. John Hamilton, of Forward Sawmills Ltd.

Mr. Hughes, Deputy Attorney General, has written to me indicating that his response will be available by March 15th. I trust that I shall also receive any representations you wish to make by that date.

Yours sincerely,

Rick Cooper
for Earl A. Friedmann
Ombudsman

APPENDIX B

APPENDIX 4

BOARD
6951 Westminster Highway,
Richmond, B.C.
V7C 1C6
Telephone 273 2266
Telex 04-357722

OFFICE OF THE COMMISSIONERS

21 March 1984

Dr. Karl A. Friedmann,
Ombudsman,
Legislative Assembly of British Columbia,
8 Bastion Square,
Victoria, B.C.
V8W 1H9

Your File No. 83-50440 & 83-50723

Dear Dr. Friedmann:

RE: Forward Sawmills Ltd.
Firm No. 239186

Your letter dated February 14, 1984, has been considered by the Commissioners.

Parts I and II of your letter describe two different actions about which Mr. Hamilton is complaining. It appears to the Commissioners that Part II refers to matters entirely within the jurisdiction of the Sheriff's Office. They, therefore, make no comment regarding Part II.

The basic question which you are raising in Part I is whether the Board can enforce the lien it has under Section 52(2) of the Workers' Compensation Act against the property of a principal of a limited company without applying to the courts. The Commissioners feel that you have no jurisdiction to deal with this matter since it is a matter "...in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court..." under Section 11(1)(a) of the Ombudsman Act. Before the action complained of was carried out, Mr. Hamilton could have commenced court proceedings and he could still do this to challenge the Board's action. The matters at issue are not ones over which the Board would have exclusive jurisdiction under Section 96(1) of the Workers' Compensation Act.

continued...../2

Because they are questioning your jurisdiction, the Commissioners are not responding in detail to all the points you have made. They will state, however, that, without a court determination of the matter, they are not prepared to conclude that an error was made by the Board. They also question your suggestions as to the amount of loss suffered by Mr. Hamilton as a result of any action of the Board.

In the result, the Commissioners feel that the matter you have raised is one outside your jurisdiction which should be left to the Courts to determine. They cannot accept your recommendations.

Yours truly,

N. C. ATTEWELL
Secretary to the Board

NCA:md

Province of British Columbia

OMBUDSMAN

Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 83 50440
83 50723

April 3, 1984

Mr. W. Flesher
Chairman
Workers' Compensation Board
6951 Westminster Highway
Richmond, B.C.
V7C 1C6

Dear Mr. Flesher:

Re: Firm #239196

I am in receipt of Mr. Attewell's letter of March 21, 1984, contesting my jurisdiction to investigate the complaint of Mr. Hamilton, Director of Forward Sawmills Ltd. In that letter Mr. Attewell makes reference to the provisions of Section 11(1)(a) of the Ombudsman Act.

> 11. (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission
> (a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired; or... (my emphasis)

Mr. Attewell does not specify the "enactment" containing the right which might preclude my investigation.

Perusal of the Workers Compensation Act reveals only one statutory appeal right, that to a Board of Review, and thence to the Commissioners in respect of "a decision under this Act with respect to a worker". I assume that you are not suggesting that the decision of the Board to instruct seizure and sale of Mr. Hamilton's personal goods on a writ issued against his company, constitutes a decision with "respect to a worker".

Mr. Attewell agrees with my interpretation that the actions of which Mr. Hamilton complained are not within the exclusive jurisdiction granted the Board under Section 96(1) of the Workers Compensation Act. I can only

...2

assume, then, that he is arguing jurisdiction on your behalf, on the basis that Mr. Hamilton may commence an action under the Judicial Review Procedure Act, or have civil remedies which may have been or may still be available, such as an application for an injunction against the Board or Sheriff Services, or a suit for damages against the Board.

In my opinion such possible civil remedies do not constitute "under an enactment a right of appeal or objection or a right to apply for a review on the merits" contemplated by Section 11(1)(a) of the Ombudsman Act. On one occasion an authority suggested that an action under the Judicial Review Procedure Act fell within the wording of Section 11(1)(a). I do not accept that view. The Ombudsman Act according to case law does not require the complainant to exhaust all avenues of judicial review before the Ombudsman can investigate a complaint.

I invite you to contact my solicitior, Mr. Brent Parfitt, if you wish further elaboration of my position on this issue. I trust that this information will assist you and look forward to receiving the Board's response to my February 14th letter.

Yours sincerely,

Karl A. Friedmann
Ombudsman

March 30, 1984

Dr. Karl Friedmann
Ombudsman
8 Bastion Square
Victoria, B. C. V8W 1H9

Dear Dr. Friedmann

Re: Complaint of John Hamilton
Your files: 83 50440, 83 50723

The Deputy Attorney General has asked me to respond directly to your letter of February 14, 1984 addressed jointly to the Chairman of the Workers' Compensation Board and himself in respect of the above complaint. In Mr. Cooper's letter of March 16, 1984 he kindly extended to March 30, 1984 the period in which representations may be made in the matter under section 16 of the Ombudsman Act.

I am pleased to advise that I have interviewed Deputy Sheriff Owens and made other enquiries as to the facts and that has been completed. Generally, there seems to be no issue with the facts. However, there remains a very difficult question of law concerning the interpretation of section 52 of the Workers Compensation Act in these circumstances. Several legal opinions have been prepared and we do not have a consensus.

I spoke to Dorothy Hayward today and suggested a possible solution to this impasse which she said she would convey to you. We could apply to court by Originating Application for an interpretation of section 52 on the facts in this case as an Agreed Statement of Facts. Both Sheriff Services and the Workers' Compensation Board, I submit, should have a very strong interest in attaining certainty in interpretation of section 52 so that they can avoid exceeding their lawful authority.

Ms. Hayward mentioned some potential concerns you might have. Certainly, you can expect full cooperation from me on anything that is within my power in moving this complaint toward resolution.

Yours truly

George H. Copley

George H. Copley
Barrister & Solicitor

cc: E. N. Hughes, Q.C.
W. Flesher, Chairman, WCB
S. Rumsey, A/Assistant Deputy Minister

609 BROUGHTON STREET, VICTORIA, BRITISH COLUMBIA V8V 1X4 TELEPHONE (604) 384-4134

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8V 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 83 50440

Your File 0-140-3
(Hamilton, John)

April 12, 1984

E.N. Hughes, Q.C.
Deputy Attorney General
5th Floor - 609 Broughton Street
Victoria, B.C.
V8V 1X4

Dear Mr. Hughes:

On April 9th, 1984 my staff met with Mr. George Copley to discuss your suggestion that the Ministry proceed by way of an Originating Application for an interpretation of Section 52 of the Workers' Compensation Act. As my staff told Mr. Copley, I have several concerns about this suggested resolution. My staff canvassed the opinions of both Mr. Hamilton and Island Finances on the issue, and they also raised concerns.

Before I agree to hold this file in abeyance I would like to have your Ministry's position on the following issues.

1. Will the Ministry, either individually or in conjunction with the Board, undertake to pay all legal costs of both Mr. Hamilton and Island Finances as parties to this action? It may be that Mr. Hamilton and Island Finances feel that their interests are sufficiently close that they could present a joint submission: at this stage that is not clear. I am also assuming that any costs to Mr. Hamilton and Island Finances would be within the range of tariff usually billed to your Ministry, which is, I understand, $100.00 per hour.

2. Will the Ministry agree, assuming that Court scheduling allows, to present the application forthwith. I would have grave concerns about agreeing to this suggestion if the matter could not be decided by this summer. While one cannot predict court schedules, this matter should be dealt with in Chambers. Your undertaking, along with the Board's, to proceed as quickly as possible with the application would assist me in arriving at a decision.

...2

3. Will the Ministry undertake to be bound by the decision of the trial judge, and can you offer any commitment that the Board would also agree to this position? I can see no reason to suspend my own involvement if it were your intention, or that of the Board, to appeal an unfavourable ruling.

4. Is there agreement to proceed on the application on the facts of this complaint and only those facts?

Mr. Hamilton has asked that I express his concern that he would not be required to sign any form of release or waiver of his rights in order to receive the Ministry's fiscal support in such an application.

Lastly I wish to make it clear that my letter of February 14th, 1984 did not exhaust my concerns in this case. If in fact you do proceed to Court for an interpretation, and it is decided that Section 52 of the Workers' Compensation Act permitted this seizure and sale, that would not end my involvement. It is likely that I would proceed to outline other apparent grounds for a finding under the Ombudsman Act, and that my recommendations on those grounds may include a request for compensation to Mr. Hamilton and Island Finances.

I trust that you will be able to answer the concerns I have listed, as an application to the Courts could have the effect of resolving not only Mr. Hamilton's complaint, but also any present uncertainties in sheriff practice.

Yours sincerely,

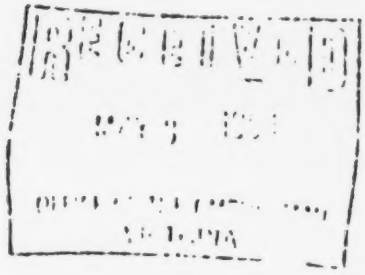
Karl A. Friedmann
Ombudsman

cc: Mr. W. Flesher
Chairman
Workers' Compensation Board

Mr. G. Copley
Civil Law Solicitor

April 27, 1984

FILE: 0140-3 (Hamilton, John)



Dr. K. Friedmann
Ombudsman
8 Bastion Square
Victoria, B.C.
V8V 1X4

Dear Dr. Friedmann

Re: Complaint of Mr. John Hamilton
Your Files: 83 50440, 83 50723

I have been asked to respond directly to your letter dated April 12, 1984, and addressed to the Deputy Attorney General in respect of the above complaint.

I set out the Ministry's position on a number of issues you raised respecting the suggestion that the parties apply by way of Originating Application for an interpretation of section 52 of the Workers' Compensation Act.

1. Scheduling - You have requested an undertaking from the Ministry to proceed as quickly as possible. This Ministry has no control over counsel not representing the Crown and therefore cannot give the undertaking requested. However, I am authorized to say that this Ministry would fully cooperate in bringing an application to Court in a timely manner.

2. Decision of the Trial Judge-This Ministry would never agree to waive a right of appeal in advance, nor could it offer any commitment on behalf of the Workers' Compensation Board since it is an independent agency.

3. Facts of this complaint-A special case could be formulated under Rule 33 setting out the facts necessary for the court to interpret s. 52.

M. KMF 84-05-03 c.

609 BROUGHTON STREET, VICTORIA, BRITISH COLUMBIA V8V 1X4 TELEPHONE (604) 384-4434

4. Costs-Island Finances Ltd. by virtue of its position vis a vis Mr. Hamilton has the primary interest in pursuing a claim against the Crown for alleged unlawful seizure and sale by the Sheriff. Island Finances Ltd. has not chosen to initiate proceedings. This Ministry could not justify payment of money out of public funds to provide Island Finances Ltd. with a lawyer to pursue their claim against the Crown. As an independent financial corporation they undoubtedly can afford legal services to pursue their claim and if they choose not to do so that is their decision. Also, Mr. Hamilton should require no representation separate from Island Finances Ltd. since, presumably, they have identical interests in attempting to regain the chattels or obtain compensation for the chattels seized. If there is an issue between Mr. Hamilton and Island Finances Ltd., then that is separate and apart from the section 52 issue and the Crown should not be put to the expense of settling any private legal differences as between Mr. Hamilton and Island Finances Ltd. Finally, it must be kept in mind that if your interpretation of the law is correct and Island Finances Ltd. takes that position, the Court would be quite sympathetic to a request for costs in their favour.

I trust that the above clarifies the position of the Ministry of Attorney General in response to your letter dated April 12, 1984. You will appreciate that the reason for suggesting an application to court was to clarify the legal position of the parties.

Yours truly,

George H. Copley

George H. Copley
Barrister and Solicitor

GHC/amtl

c.c.

Mr. E.N. Hughes, Q.C.
Deputy Attorney General

Mr. W. Flesher
Chairman
Workers' Compensation Board

Province of British Columbia

British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 83 50440
83 50773

Your File 0-140-3
(Hamilton, John)

Firm # 239186

May 17, 1984

E.N. Hughes, Q.C.
Deputy Attorney General
5th Floor - 609 Broughton Street
Victoria, B.C.
V8V 1X4

Mr. W. Flesher
Chairman
Workers' Compensation Board
6951 Westminster Highway
Richmond, B.C.
V7C 1C6

Gentlemen:

Re: Mr. John Hamilton, Forward Sawmills Ltd.

I regret that we have not been able to reach agreement on the Attorney General's suggestion to proceed to court for a determination on the questions of law related to Mr. Hamilton's complaint.

To date I have received no response from the Workers' Compensation Board to my letter of April 3rd. I assume, therefore, that the Board does not intend to make further argument on the question of my jurisdiction.

In my letter of February 14th I invited representations on my proposed findings and anticipated recommendations in this matter. Accordingly, and pursuant to section 16 of the Ombudsman Act, I again invite the written representations of the Board and of the Ministry, on the facts of this case and on my anticipated recommendations, by May 25, 1984. On that date I shall decide whether or not to proceed to report my opinion and make my recommendations pursuant to section 22 of the Ombudsman Act.

Yours sincerely,

Karl A. Friedmann

Karl A. Friedmann
Ombudsman

cc: Mr. G. Copley

FREEMAN & COMPANY
Barristers & Solicitors

HAROLD FREEMAN
DAVID L SILVERS
DAVID HIBERMAN
LEONARD BOBROFF
SANDRA D SUTHERLAND
C DENNIS GODDARD
HERBERT B SILBER
JOEL S MACKOFF
E NEIL KORNFELD
SUNNY ROTHSCHILD
GARY S SEGAL
ERIC A DOLDEN
DOUGLAS B HYNDMAN
MARY S WEINTRAUB
GERALD A CUTTLER
JORGE ROIMISER

DAVID A FREEMAN Q C
MORLEY HOFFMAN
HERBERT M LOCHER
HOWARD M FARBY
HOWARD SHAPRAY
MICHAEL M KALEF
LEON GETZ
CAROL A REYFOOT
BENJAMIN W GOLDBERG
DON PANDMAN
STANLEY WONG
RONALD JOSEPHSON
ANDREW BURY
DOUGLAS A SICE
CHRIS THEODOROPOULOS
C INGE POULUS

YOUR FILE NO
OUR FILE NO 40,260

TELEPHONE (604) 681 4201
TELECOMMUNICATION 669-9726
TELECOPIER 688-6930
TELEX 04-508814
CABLE ADDRESS "FREESIL"

18TH FLOOR THE BURRARD BUILDING
1030 WEST GEORGIA STREET
VANCOUVER, B C.
CANADA
V6E 3C4

71

June 11, 1984

DELIVERED BY COURIER

Legislative Assembly
Province of British Columbia
Ombudsman
8 Bastion Square
Victoria, B.C.
V8W 1H9

Attention: Mr. Brent Parfitt

Dear Sirs:

Re: Hamilton

Further to your letter of May 22, 1984, and our telephone conversation of June 7, 1984, you have requested our opinion concerning the enforcement of the "lien" created by Section 52 of the Workers Compensation Act, R.S.B.C. 1979, C. 437 (the "Act"), and, in particular, the enforceability of that lien against property owned by a director of the corporation against which an assessment is made where that property is used in, or in connection with, the industry with respect to which the corporation was assessed.

It is clear from the Act that certain definite remedies are provided to the Workers' Compensation Board (the "Board") where an assessment is made against an employer, that employer is a corporation and the assessment remains unpaid. Those remedies are provided specifically in Section 45 of the Act. Under that section, the Board can convert an unpaid assessment to a judgment simply by filing a certificate with any District Registrar of the Supreme Court or any Registrar of the County Court. Thereafter, the certificate "... becomes an Order of that Court and may be enforced as a judgment of the Court against that person for the

amount mentioned in the certificate."

Although the Board is given the extraordinary right to a judgment without due process, the Legislature has also seen fit to expand the Board's rights by creating a lien in priority to all other charges of whatever nature, whenever created, with respect to that property used by the employer in the business with respect to which an assessment has been made. The effect of this is clear. If the employer carries on three separate businesses and an assessment is made in respect of one of those businesses, the Board can obtain a judgment which is enforceable against all of the assets of that employer (i.e., the assets of all these businesses). Therefore, the Board could issue a Writ of Seizure and Sale instructing the sheriff to seize and sell sufficient of the employer's assets (without regard to where those assets are located or in which industry they are used). However, if the sheriff seizes assets of the employer used by the employer in the business for which an assessment has been made, then, upon a sale of those assets, Section 52 of the Act gives the Board the right to payment out of the sale proceeds in priority to any and all other charges. If assets are sold from one of the other two businesses carried on by the employer, no such absolute priority exists, and the Board will be paid out subject to the rights of other creditors, both secured and unsecured.

The Act is not quite so clear with respect to the rights of the Board under Subsections 52(2) and (3). Although Subsection 52(2) purports to extend the 52(1) lien to cover "... the property of any director, manager or other principal of the corporation where the property is used in, or in connection with, the industry with respect to which the employer was assessed ...", there is no applicable provision for the enforcement of that lien. Section 45 of the Act states that the certificate, "... when so filed, becomes an Order of that Court and may be enforced as a judgment of the Court against that person for the amount mentioned in the certificate" (emphasis added). The words "against that person" refer to the person by whom the assessment was payable, as stated earlier in Section 45(2). The person by whom the assessment is payable in this situation is Forward Sawmills Ltd., and therefore that is the person against whom the order is enforceable, not John Hamilton. Therefore, the interaction described above between Sections 45 and 52 of the Act is not applicable when it concerns property owned in this case, by Mr. Hamilton.

Subsection 52(3) appears to be an attempt to provide for the enforcement of the lien created by both Subsections 52(1) and 52(2). The major difficulty with the application of 52(3) is that it is not stated that the provisions of the Court

Order Enforcement Act are to apply mutatis mutandus. It is our opinion that these words are crucial to the application of Subsection 52(3) and the application of the provisions of the Court Order Enforcement Act to the Act, as the Court Order Enforcement Act deals with the rights and remedies of unsecured creditors whereas the lien rights, as created by Section 52 of the Act, make the Board the holder of a security interest and takes it outside of the provisions of the Court Order Enforcement Act.

Subsections 52(2) and (3) must be construed strictly as the Act (at least with respect to the collection of assessments) is a taxing statute and, as a general principle of statutory interpretation, taxing statutes must be construed strictly against the government. In addition, the Legislature has purported to create a very extraordinary remedy (both in 52(1) and in 52(2)), and we are of the opinion that a Court of law would look very closely at these "rights" and would be loath to enforce such rights against individuals such as Mr. Hamilton in the absence of very, very clear language. The Board has been given the right to convert certificates representing unpaid assessments to judgment without due process, and this is a matter which we believe a Court would also take into account when considering the Board's rights as against an individual such as Mr. Hamilton.

We trust the above is in order. If you have any further questions, please do not hesitate to contact either Douglas Hyndman or the writer.

Yours very truly,

FREEMAN & COMPANY

Per:
Leon Getz

LG/jg

Legislative Assembly
Province of British Columbia

OMBUDSMAN

Province Square
Victoria
British Columbia
V8V 1H9
Telephone (604) 387 5855
Zenith 2221

File No: 83 50440
83 50773

Your File 0-140-3
(Hamilton, John)

Firm # 239186

June 18, 1984

E.N. Hughes, Q.C.
Deputy Attorney General
5th Floor - 609 Broughton Street
Victoria, B.C.
V8V 1X4

Mr. W. Flesher
Chairman
Workers' Compensation Board
6951 Westminster Highway
Richmond, B.C.
V7C 1C6

Gentlemen:

Re: Mr. John Hamilton, Forward Sawmills Ltd.

I am in receipt of Mr. Copley's letter of May 24, 1984, being a response on behalf of the Ministry of Attorney General, and of Mr. Attewell's letter, of May 28th, 1984, on behalf of the Workers' Compensation Board. The Board continues to dispute my jurisdiction to investigate Mr. Hamilton's complaint, arguing that I am precluded from an investigation by section 11(1)(a) of the Ombudsman Act. To the Board, the Ombudsman Act was not intended to give my office jurisdiction over matters within the ordinary jurisdiction of the court. Further the Board argues that the fact that the Supreme Court of British Columbia could, if the matter were before it, make a decision "on the merits" of this case, precludes my involvement.

I do not share the Board's opinion. Rather I share the opinion prepared in 1979 by Ms. P. Evans, an articling student of the Ministry of Attorney General:

> "The object of a statute such as the Ombudsman Act is to give an applicant a quick, easy and inexpensive way of having his problems looked into. The statute does not seek to usurp the jurisdiction of the court... His (the Ombudsman's) jurisdiction is largely concerned with areas which, if the matters were ever taken to court, would be found to fall outside the scope of judicial review. To suggest that an applicant may be required to exhaust all other forms of recourse including judicial review, would be to go against the spirit of this particular statute"..

...2

I remain of the opinion that possible civil remedies available to Mr. Hamilton do not constitute a right "under an enactment... to apply for a review on the merits" contemplated by section 11(1)(a) of the Ombudsman Act. Accordingly, and pursuant to section 22 of the Ombudsman Act I now report my opinions and make my recommendations on the complaint of Mr. John Hamilton.

Before proceeding to detail my opinions, I wish to make three points. Firstly, the opinions and recommendations are based only on the arguments given in my letter of February 14th, 1984, written pursuant to section 16 of the Ombudsman Act. As previously mentioned, I reserve the right to reach findings and to make recommendations based on other apparently problematic actions in this seizure and sale at a later date, if necessary. As this letter does not deal with these other actions, I do not intend to comment on Mr. Copley's opinion as to the "equities of this case".

Secondly, I note the Ministry of Attorney General's attempt to resolve the legal question basic to this complaint. The Ministry has negotiated with my staff and myself on the possibility of a referral to the court by the Ministry, requesting an interpretation of section 52 of the Workers Compensation Act, using this case as an agreed statement of facts. That suggestion was made in late March, in a letter of which the Board received a copy. Regrettably I was not able to reach agreement with the Ministry as to the terms on which I would suspend my investigation in favour of the application. As the Board, though fully informed, chose not to participate in this attempt to resolve the matter, I was surprised to learn that the Board now proposes to initiate its own action in the courts. As yet I have not been apprised of the nature of this action.

Lastly I inform you that I have received the opinion of Mr. Leon Getz, barrister & solicitor. Mr. Getz' opinion confirms my interpretation of the law in this matter:

> "The person by whom the assessment is payable in this situation is Forward Sawmills Ltd., and therefore that is the person against whom the order is enforceable, not John Hamilton. Therefore, the interaction described above between Section 45 and 52 of the Act is not applicable when it concerns property owned, in this case, by Mr. Hamilton."

Pursuant to section 22 of the Ombudsman Act I report my opinions as follows. These opinions are expressed naming the individual employees involved in this seizure and sale. I do not intend that my opinion be

...3

construed, necessarily, as criticism of those individuals. Deputy Sheriff Owens and Mr. Robertson were without policy or other advice on the legal question. In fact they are to be complimented for having taken the initial step of questioning their ability to act on the apparently valid writ to hand.

Nevertheless, firstly, it is my opinion that Deputy Sheriff Owens made a mistake of law by proceeding to sale of the seized items on writs issued against Forward Sawmills Ltd. Secondly, it is my opinion that Deputy Sheriff Owens was negligent in proceeding to sell the seized items without seeking legal advice as to the validity of the seizure: the negligence arises once Deputy Sheriff Owens became aware that the Board could not confirm his interpretation of section 52 of the Workers Compensation Act.

Thirdly, it is my opinion that Mr. K.G. Robertson was negligent in authorizing the sheriff to accept the bid without obtaining legal advice as to the validity of the seizure: the negligence arises when Mr. Robertson authorized the sale knowing that he had received no response to his request for Mr. Massing's opinion. Lastly it is my opinion that Deputy Sheriff Owens acted improperly in receiving the amount of $3,710.00 from Mr. Lloyd, as some form of 'payment' for the second skidder without confirmation from Mr. Hamilton that his allegation of theft had been withdrawn in favour of an agreement to sell for a price certain.

In my letter written pursuant to section 16 of the Ombudsman Act I outlined two proposed recommendations, both of which would serve to compensate Island Finances Ltd. and Mr. Hamilton for their losses. I have considered whether or not to make a direct recommendation, specifying a specific quantum and apportioning liability between the Ministry and the Board. Such a recommendation would require expert knowledge of the condition of the equipment seized, and of the market prices of such equipment today. Such knowledge is not readily available to me.

Accordingly, and pursuant to section 22 of the Ombudsman Act, I recommend that the Ministry and the Board submit to arbitration pursuant to the Arbitration Act. Further I recommend that the arbitrator or arbitrators appointed be instructed to accept my findings above and be empowered to decide the following questions:

1. the amount of compensation to be paid to Island Finances Ltd.;

2. the amount of compensation to be paid to Mr. John Hamilton; and

...4

3. the proportionate liability of the Board and the Ministry for awards made to Island Finances Ltd. and to Mr. Hamilton.

Pursuant to section 23 of the Ombudsman Act I request that you notify me, in writing, by July 5th, 1984 of the steps taken to given effect to my recommendation, or of your reason for not so doing.

Yours sincerely,

Karl A. Friedmann

Karl A. Friedmann
Ombudsman

June 25, 1984 — OUR FILE: 0140-3 (Hamilton)

Dr. Karl Friedmann
Ombudsman
8 Bastion Square
Victoria, B.C.
V8V 1X4

Dear Dr. Friedmann:

RE: Complaint of Mr. John Hamilton
Your File: 83 50440, 83 50723

I have been asked to reply directly to your letter dated June 18, 1984, and addressed to the Deputy Attorney General and the Chairman of the Workers' Compensation Board, in respect of the above complaint.

Now that the Workers' Compensation Board has proposed to initiate legal action in the Courts to settle the Board's rights in this matter, I suggest that it is premature to submit to arbitration those questions listed on pages 3 and 4 of your letter. While I cannot speak for the Workers' Compensation Board, until the question of liability is settled by the Court, it is my respectful view that there are no differences between the Board and the Ministry of Attorney General which could form the basis for a submission of an arbitrator.

It may be that the Court will answer the questions raised on pages 3 and 4 of your letter during the course of the Board's action. If it does not and those questions remain as issues to be settled, then it will be up to the parties involved to best decide the procedure to be adopted.

Yours truly,

George H. Copley

GEORGE H. COPLEY
Barrister
Legal Services Branch

GHC/bas
c.c. E.N. Hughes, Q.C.
Mr. David J. Warren
Mr. W. Flesher

WORKERS' COMPENSATION BOARD of British Columbia

6 July 1984

Dr. Karl A. Friedmann,
Ombudsman,
Legislative Assembly of British Columbia,
8 Bastion Square,
Victoria, B.C.
V8W 1H9

Dear Dr. Friedmann:

RE: John Hamilton
Forward Sawmills Ltd.

Your letter received by the Board on June 20, 1984, has been considered by the Commissioners.

The Commissioners do not consider that your letter provides any grounds for their changing their conclusion communicated to you in my previous letters of May 28 and March 21, 1984. They remain of the opinion that this matter is one which is outside your jurisdiction. With respect to the opinion of Ms. Evans which you quote, it is difficult to comment without seeing the context in which her statement was made. However, she appears to be referring to judicial review proceedings. As pointed out in my letter of May 28, 1984, the Commissioners are not, in this case, relying on the availability of proceedings under the Judicial Review Procedure Act.

The Board will, in the near future, be commencing a court action in which all parties affected will be able to participate and raise questions for the resolution of the court. The Commissioners consider that Court proceedings are the appropriate way of settling any disputes regarding this matter.

Yours truly,

N. C. ATTEWELL
Secretary to the Board

NCA:md

WESTMINSTER HIGHWAY RICHMOND B.C. V7C 1C6 / TELEPHONE 273 2266 / TELEX 01 [illegible]

VANCOUVER
APR 9 1985
REGISTRY

NO. A842422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

RE: WORKERS' COMPENSATION BOARD

BETWEEN:

WORKERS' COMPENSATION BOARD

PETITIONER

AND:

KARL A. FRIEDMANN, OMBUDSMAN OF THE PROVINCE OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE GIBBS

IN CHAMBERS

G.W. Massing and
E.D. Bates — for the Petitioner;

F.S. Borowicz — for the Respondent;

Date and place of Hearing: Monday, April 1, 1985, Vancouver, B.C.

This is a petition under the Judicial Review Procedure Act, RSBC, 1979, Chap. 209. The Workers' Compensation Board ("WCB") requests an order, a declaration, and an injunction, in respect of decisions made, and action undertaken, or to be undertaken, by the Ombudsman on a complaint by one John Hamilton, a director of Forward Sawmills Ltd. ("Forward"). The precise relief requested is:

> (1) An order, pursuant to Section 2(2)(a) of the Judicial Review Procedure Act, R.S.B.C. 1979, Chapter 209, quashing the decisions, findings and recommendations contained in the Ombudsman's letter addressed to the Deputy Attorney General and the Chairman of the Workers' Compensation Board and received by the Workers' Compensation Board on 20 June 1984 in respect of a complaint by Mr. John Hamilton, Director of Forward Sawmills Ltd.;
>
> (2) A declaration, pursuant to Section 2(2)(b) of the Judicial Review Procedure Act, R.S.B.C. 1979, Chapter 209, that the Ombudsman had no jurisdiction pursuant to the Ombudsman Act, R.S.B.C. 1979, Chapter 306, to investigate the said complaint of Mr. John Hamilton;
>
> (3) An injunction, pursuant to Section 2(2)(b) of the Judicial Review Procedure Act, R.S.B.C. 1979, Chapter 209, prohibiting the Ombudsman from taking further action in respect of the said complaint.

These proceedings arise out of a collection by the WCB of the outstanding and unpaid assessments levied upon Forward under the Workers Compensation Act, RSBC 1979, Chap. 437 for the years 1978, 1979, and 1980. By virtue of section 52(1) of the Act, the

WCB had a lien on the property or proceeds of property of Forward used in connection with its business. Section 52(2) defines the word "property" to include the property of any director, manager or other principal of Forward where the property is used in connection with Forward's business.

Acting under section 45 of the Workers Compensation Act, the WCB filed certificates of the indebtedness of Forward with the County Court of Vancouver Island, Nanaimo Registry, and thereby obtained summary judgment. In all, three certificates were filed. Each was followed by a Writ of Seizure and Sale. The style of cause of each certificate, and of each writ, describes the WCB as judgment creditor and Forward as judgment debtor.

The writs of seizure and sale were forwarded for execution to the sheriff's office at Campbell River for execution. A caterpillar bulldozer and mountain logger skidder, the property of Hamilton, were seized and sold and $3,800 allocated to the WCB out of the sale price. Later the sheriff's office seized the proceeds of sale of another mountain logger skidder, apparently belonging to Hamilton, and allocated $2,676.48 to the WCB out of the seized funds.

As there was no certificate, no judgment, and no writ against him, Hamilton complained to the Ombudsman, who undertook an investigation. Lengthy correspondence between the Ombudsman,

the WCB, and the Deputy Attorney General ensued. I was advised, when argument commenced before me, that the Ombudsman has completed his work to the point of submitting a report to the Lieutenant Governor in Council pursuant to section 24 of the Ombudsman Act, RSBC, 1979, Chap. 306.

The portions of the letter referred to in the first paragraph of the prayer for relief, in respect of which the WCB applies for an order to quash, are as follows:

> Nevertheless, firstly, it is my opinion that Deputy Sheriff Owens made a mistake of law by proceeding to sale of the seized items or writs issued against Forward Sawmills Ltd. Secondly, it is my opinion that Deputy Sheriff Owens was negligent in proceeding to sell the seized items without seeking legal advice as to the validity of the seizure; the negligence arises once Deputy Sheriff Owens became aware that the Board could not confirm his interpretation of section 52 of the Workers Compensation Act.
>
> Thirdly, it is my opinion that Mr. K.G. Robertson was negligent in authorizing the sheriff to accept the bid without obtaining legal advice as to the validity of the seizure: the negligence arises when Mr. Robertson authorized the sale knowing that he had received no response to his request for Mr. Massing's opinion. Lastly it is my opinion that Deputy Sheriff Owens acted improperly in receiving the amount of $3,710.00 from Mr. Lloyd, as some form of 'payment' for the second skidder without confirmation from Mr. Hamilton that his allegation of theft had been withdrawn in favour of an agreement to sell for a price certain.
>
> . . . .
>
> Accordingly, and pursuant to section 22 of the Ombudsman Act, I recommend that the Ministry and the Board submit to arbitration pursuant to the Arbitration Act. Further I recommend that the arbitrator or arbitrators appointed be instructed to accept my findings above and be empowered to decide the following questions:

1. the amount of compensation to be paid to Island Finances Ltd.;

2. the amount of compensation to be paid to Mr. John Hamilton; and

3. the proportionate liability of the Board and the Ministry for awards made to Island Finances Ltd. and to Mr. Hamilton.

It was argued that the Ombudsman has usurped the authority of the court in making a determination of tort liability and the method of measuring damages; that he has exceeded or lost jurisdiction by investigating a matter he is precluded from investigating by section 11(1)(a) of the Ombudsman Act, and that he erroneously interpreted that section; that he exceeded or lost jurisdiction when he concluded that the matter was one "of administration" within the meaning of section 10 of the Ombudsman Act; and that he exceeded his authority by investigating a matter outside his jurisdiction.

In my opinion the WCB is not entitled to the relief requested because the questions are now academic. In the recent unreported decision of the Court of Appeal in Peltari v. Director of Lower Mainland Regional Correctional Centre and the Attorney General of British Columbia (1985), Vancouver Registry CA 003031 reference was made to the judgment of the Saskatchewan Court of Appeal in Maltby et al and the Attorney General of Saskatchewan et al (1984) 13 CCC (3d) 308. In that case, at page 311, Chief Justice Bayda said:

> It is well-settled practice, however, of this court, as it is of the Supreme Court of Canada and the courts of appeal of other jurisdictions, to refuse to entertain an appeal where the issue has become moot, except where the circumstances are of the demanding nature found in such cases as the *Winnipeg Builders' Exchange* case and *Re A.-G. Que. and A.-G. Can.* (1982), 140 D.L.R. (3d) 385, [1982] 2 S.C.R. 793, 45 N.R. 317 *sub nom. Quebec Constitutional Amendment Reference (No. 2)* (S.C.C.). While the issues raised by the application here are important, in our respectful view, they are not sufficiently demanding of a resolution to bring them within the principle of the *Winnipeg Builders' Exchange* case.

In my opinion, the issues raised by the WCB are moot. Even if the grounds were established, the issue of the requested order, declaration and injunction would serve no purpose. With the exception of reporting to the Legislature Assembly under section 24 of the Ombudsman Act, and that is a discretionary matter, the Ombudsman has completed his work. He has conducted his investigation, he has formulated his opinions, he has made his recommendations, and he has delivered his report. It would be pointless now to conclude that he could not do what he has done, particularly since, on the evidence before me, none of the legal rights or liabilities of the WCB, or Hamilton for that matter, have been altered or impaired. I was referred to nothing, and I have found nothing, which prevents the WCB from declining to accept or follow the Ombudsman's opinions on law or jurisdiction, and declining to accede to his recommendation as to remedy. If the WCB does so decline, it will be up to Hamilton to pursue whatever remedies are available to him by way of appropriate proceedings, and if he does so, the

decision will be made upon the evidence before the court and the application of the relevant law, regardless of the Ombudsman's findings.

A number of Ombudsman cases were cited to me. It should be noted that none resulted from a challenge made after the Ombudsman had completed his work. In BCDC and First Capital v. Friedman et al (1985) 1 WWR 193 (SCC) the case arose out of a refusal by BCDC to produce documents demanded by the Ombudsman at the commencement of an investigation. In Ombudsman of Ontario and Health Disciplines Board of Ontario et al (1979) 104 DLR (3d) 597 (Ont. C.A.), the matter was initiated by a reference by the Ombudsman under a section of the Ontario Act comparable to section 11(3) of the B.C. Ombudsman Act. That was also the situation in Ombudsman for Saskatchewan and Minister of Social Services et al (1979) 103 DLR (3d) 694 (Sask. Q.B.), and Ombudsman of Nova Scotia v. Sydney Steel Corporation et al (1976) NSR (2d) 361 (N.S.C.A.). None of those cases therefore is helpful or persuasive on the issue on which I dispose of the case before me.

There is another reason why the WCB cannot succeed. The application was made under the Judicial Review Procedure Act. In my opinion, in these circumstances, the WCB does not have the standing necessary to maintain proceedings under the Act. Although

the Ombudsman exercises a "statutory power" when he investigates, the decisions he made in this case have not decided or prescribed "the legal rights, powers, privileges, immunities, duties or liabilities" of either the WCB or Hamilton. It was argued that if the Judicial Review Procedure Act did not apply, the petitioner could come before the court under rule 10(1) of the Rules of Court. I think not. Rule 10(1) is procedural in nature. It does not confer standing. It is predicated upon an assumption that the applicant has standing. It then sets out a procedure to follow if the application addresses any of the subject matters therein enumerated. In my opinion the WCB was not properly before the court under either the Judicial Review Procedure Act or rule 10(1) of the Rules of Court.

For all of the reasons I have given, the petition is dismissed with costs to the respondent.

J. D. Taylor, J.

Vancouver, B.C.
April 9, 1985.

REPORT
TO
THE LIEUTENANT GOVERNOR IN COUNCIL

Pursuant to section 24(1) of the Ombudsman Act, R.S.B.C. 1979, c. 306

Re: In the matter of the complaint of Mr. J.D. Hamilton that the Sheriff Services Branch of the Ministry of Attorney General (the sheriffs) sold for less than fair value, equipment seized from him pursuant to certificates issued by the Workers' Compensation Board (the Board) and in the matter of whether or not that sale could lawfully proceed from the writs issued pursuant to the Board's certificates.

In February 1983 I received a complaint from Mr. J.D. Hamilton, Director of Forward Sawmills Ltd. The complaint was directed against the sheriffs, who had seized equipment belonging to Mr. Hamilton, (two skidders and a caterpiller tractor), used in the operation of his logging company. The company was not carrying on business so the equipment was stored at Forward Harbour at the time of the seizure, July, 1982. One skidder and a caterpiller tractor were sold by the sheriff, at public tender, in January 1983. The last item, the other skidder, was sold without tender, a month later. The sheriff received a total sum of $9,500.00, plus sales tax from the sale. This satisfied the Board's writs of seizure and sale, which totalled $6,476.48.

Mr. Hamilton brought many concerns to my office: Why, he asked, had the sheriff sold for $9,500.00, goods for which he had paid over $78,000.00? Why had the sheriff refused to seize logs owned by his company, instead of the equipment? What was he supposed to do about his chattel mortgage on the equipment, on which $60,000.00 was still owing to Island Finances Ltd.? Why had the sheriff sold the second skidder to the purchaser of the first two items, when the sheriff knew that the purchaser had removed that skidder from Forward Harbour without authority, and that Mr. Hamilton may allege theft thereby? Why were the sheriff's costs so high? $2,500.00 on a debt of only $6,500.00? Why did the Board have these assets seized, effectively putting him out of business for such a small debt, when the finance company was willing to wait to collect on a debt ten times as large?

All of these were complaints within my mandate, and I began a lengthy investigation of the actions of both the Board and the sheriffs. During that investigation I became aware of another factor, so crucial that I have focused my investigation to date on that factor alone, reserving the right to address all other issues at a later date if necessary. The paramount question which emerged was whether the sheriff could lawfully seize and sell on these writs of seizure equipment that was owned not by the Board's debtor, Forward Sawmills Ltd., but by an individual, namely Mr. Hamilton.

...2

I commenced a detailed investigation of this question. My staff obtained the files of both the Board and the sheriffs, and have discussed the matter with staff of both agencies. Additionally, I sought an outside legal opinion from a recognized practitioner in the field of debt collections. I reviewed this information, together with the representations I received from both the Ministry and the Board, and I have concluded that the sale of this equipment could not lawfully proceed from the writs at hand.

The final report of my investigation, the preliminary reports, legal opinion, and representations, are attached as appendices herein. The issue is somewhat complex, but may be summarized as follows:

- The Board commenced action to obtain certificates and writs against Forward Sawmills Ltd., for unpaid assessments. These certificates were made in accordance with section 45 of the Workers Compensation Act, and name the judgment debtor as Forward Sawmills Ltd.

- The sheriffs received the writs, and seized equipment which was known to be owned personally by Mr. Hamilton, and not by the company. It is clear from the sheriff's file that, on receipt of the writs and instruction to seize, the individual sheriff involved in this seizure believed that his action was lawful, and that his lawful right was acquired pursuant to section 52 of the Workers Compensation Act.

- After seizure, but before sale, the sheriff learned from an employee of the Board, that his interpretation of section 52 may not be shared by the Board. The sheriff wrote to that employee, requesting clarification.

- In response, a memorandum was issued to the Board's Legal Services Division. The memorandum laid out the problem and suggested the solicitor obtain an order pursuant to section 52(2) of the Workers Compensation Act, which would allow the sale of equipment owned by an individual director of the company. The memorandum notes that the Board's "policy" was that section 52 did not, of itself, "permit the Board the right to seize equipment". (See appendix A, dated 82.12.16)

- No reply to that memorandum was received, and the requested order was not obtained. Knowing that, the Board's employee authorized the sheriff to take appropriate steps to sell the equipment to the highest bidder.

All of these facts were detailed in my letter of February 14, 1984, written to both the Ministry of Attorney General and the Board pursuant to section 16 of the Ombudsman Act. Neither the Board nor the Ministry has taken issue with the facts outlined in my initial report. In fact,

the Board's only response was to argue my jurisdiction. The Ministry, on the other hand, confirmed their difficulty in achieving a definitive interpretation of the law in this matter, and proposed a resolution.

The Ministry of the Attorney General proposed that it would apply to Court for an interpretation of section 52 of the Workers Compensation Act, using Mr. Hamilton's case as the factual basis for focusing the issue. This seemed a helpful route to follow, and I was prepared to suspend my investigation to allow this to happen. Regrettably, I could not reach agreement with the Ministry on the terms of such a resolution. I felt the Crown should bear any legal costs accruing to my complainant. I could see no reason why Mr. Hamilton should bear the cost of the Crown's inability to confirm the meaning of its legislation, particularly when Mr. Hamilton may be only one of many individuals whose legal position needs such clarification.

The Board was continually informed of my negotiation with the Ministry, but chose not to participate. After the Board had been informed that the Ministry and I could not agree on a resolution, it wrote to me again. Again the Board contested my jurisdiction. It also informed me of its intention to "initiate a legal action in the courts to settle the Board's rights in this matter". To date I have not been told the nature of this action, and have not been informed that any action has been commenced.

As neither the Board nor the Ministry disputed the facts revealed by my investigation or produced any opinion or precedent to counteract the legal opinion I obtained, I issued my final report in this matter. I have substantiated the complaint that the sale of Mr. Hamilton's equipment was a mistake in law, and have recommended that the Board and the Ministry submit to arbitration to determine the actual amount of compensation owing, and their proportionate liability.

The Board has replied, stating again its intention to go to court. I remain unaware of the exact nature of the Board's intended action. The Ministry has taken the position that my recommendation is premature, because the matters may be decided by the Board's application to the court. Yet, I have not been informed that any action has been commenced and I know nothing of what such an action may involve, or when it would be decided.

Meanwhile, my complainant is without the equipment necessary if his company is ever to resume business. He has sold his logs and his timber lease to the $60,000.00 owing on the chattels which were sold by the sheriffs. Island Finances Ltd., the mortgagee has not yet billed Mr. Hamilton the $19,000.00 interest accrued on the debt since the equipment was seized by the sheriff. In my opinion, it is unjust to expect Mr. Hamilton, or Island Finances, to continue to bear the burden of this situation. To force them into the courts and to subject them to further delay and unknown costs for legal representation is, I believe, unreasonable.

...4

Accordingly, I request your assistance in this matter. I request that the Board and the Ministry of Attorney General be directed to take the corrective action outlined in my recommendations attached hereto. I shall attempt to respond to any requests you have for further information which you may require.

Karl A. Friedmann
Ombudsman

Province of British Columbia

OFFICE OF THE MINISTER

Ministry of Labour

Parliament Buildings
Victoria
British Columbia
V8V 1X4

October 31, 1984

Dr. Karl A. Friedmann
Ombudsman
8 Bastion Square
Victoria, British Columbia
V8W 1H9

Dear Dr. Friedmann:

Re: Your report to the Lieutenant Governor in Council re: Mr. J.D. Hamilton / Forward Sawmills Ltd.

As I am sure you are aware, the Workers' Compensation Board has commenced court proceedings with respect to this matter. It would be inappropriate to take a position with respect to your recommendations pertaining to Arbitration until the court has dealt with the matter. In particular, the issues to be argued before the court pertaining to section 11 (1) (a) of your Act could give a very definitive response to your recommendation of Arbitration.

It would seem appropriate that we all await the adjudication of the presiding judge. Once he has spoken, immediate further consideration will be given to your report by the Cabinet.

Yours truly,

R.H. McClelland
Minister

cc: Honourable E.N. Hughes
Mr. Bert Hick

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

February 5, 1985

The Honourable W.R. Bennett, P.C.
Premier of the Province of British Columbia
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Bennett:

Re: Report of the Ombudsman
to the Lieutenant Governor in Council
re Mr. J.D. Hamilton/Forward Sawmills Ltd.

I am responding to Mr. McClelland's letter of October 31, 1984, a copy of which is enclosed. I realize that the questions of whether I am precluded from investigating the Hamilton case by virtue of section 11(1)(a) of the Ombudsman Act is before the Courts. However, my investigation has long since been completed and I have made my recommendations. Even if the Workers' Compensation Board were to succeed in their application to the Court, the Court's decision would not preclude Cabinet from considering and implementing my recommendations.

As you know, the Court challenge does not address the merits of Mr. Hamilton's complaint. He is not a party to the case, and the decision of the Court will not resolve his predicament. In the meantime, the Courts are extremely busy, the wheels of justice move slowly and Mr. Hamilton continues to bear the brunt of the Board's errors.

I must also point out that the Ministry of Attorney General is also an authority involved in this complaint. The Ministry of Attorney General has not challenged my jurisdiction. The Ministry of Attorney General has suggested that there is no legal consensus on the interpretation employed by the Board of this section of the Workers Compensation Act. In fact, the Ministry has suggested that the Courts be asked to make a determination of the law. The matter I have investigated concerning the Workers' Compensation Board's procedures will not be dealt with by the Courts in the application by the Board regarding my jurisdiction. Regardless of the outcome of that application, I believe that the Hamilton complaint should be considered by Cabinet.

...2

In my opinion, it would be in everyone's interest that this problem be dealt with. The matter is separate from the Workers' Compensation Board's Court action, and will not be dealt with by the Court. My solicitor advises that I am not in contempt of Court by asking Cabinet to consider my report, nor would I be by placing a report before the Legislative Assembly.

I hope that Cabinet will review its position in this matter and consider the substance of my report.

Yours sincerely,

Karl A. Friedmann
Ombudsman

Enclosure

Province of
British Columbia

OFFICE OF THE
CABINET SECRETARIAT

Ministry of
Intergovernmental
Relations

Parliament Buildings
Victoria
British Columbia
V8V 1X4

95

March 13, 1985

Dr. Karl A. Friedmann
Ombudsman
8 Bastion Square
Victoria, B.C.
V8W 1H9

Dear Dr. Friedmann:

Re: Report of the Ombudsman to the Lieutenant Governor in Council re: Mr. J.D. Hamilton/Forward Sawmills Ltd.

On October 5, 1984, the then Minister of Labour wrote to you indicating that he thought it inappropriate to take a position with respect to your recommendations until the Court had spoken on the application challenging your jurisdiction in this matter.

On February 5, 1985, you responded to Mr. McClelland's letter of October 31, 1984. You pointed out that the Courts are extremely busy, and the wheels of justice move slowly.

I, therefore, thought it appropriate to enquire just when the Court case is to take place. I am advised that your lawyer, the lawyer for the Workers' Compensation Board, and the Court Registry have all agreed to a one day hearing on the 27th day of this month.

It would seem only sensible to await the Court hearing. I am advised that this will be a chamber argument without viva voce evidence. Usually Court decisions in this kind of matter are not long delayed.

I will have my file diarized to March 29th. On that day, I will seek a report on the conclusion of the hearing with a view to ascertaining what the judge has said about a judgment date (assuming he has not

...2

adjudicated orally on March 27th). I assume your lawyer will have reported to you by then. Further contact will nevertheless, at that time, be made with you on behalf of the Lieutenant Governor in Council.

Yours truly,

Bert Hick
Secretary to Cabinet

AEH/enh/gc

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 83 50440

April 10, 1985

Mr. Bert Hick
Secretary to Cabinet
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Hick:

Re: Mr. J.D. Hamilton/Forward Sawmills Ltd.

I enclose a copy of the judgment of His Honour Mr. Justice Gibbs, in the action between the Workers' Compensation Board and my office. As you will see, the Court dismissed the Board's challenge of my jurisdiction in this matter.

As you know, my complainant has waited many months to receive consideration of his case. The question of the merits of his complaint has been delayed by the legal challenge. I request that you seek the Cabinet's response to the content of my report. I would appreciate that response within a week, if at all possible.

Yours sincerely,

Karl A. Friedmann
Ombudsman

Enclosure

HAND DELIVERED

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

April 11, 1985

DELIVERED BY HAND

Mr. Bert Hick
Secretary to Cabinet
Room 276 East Annex
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Hick:

Re: Mr. J.D. Hamilton/Forward Sawmills Ltd.

I understand that Cabinet has requested an estimation of the amount of losses suffered by Mr. Hamilton and Island Finances Limited as a result of the seizure and sale of Mr. Hamilton's equipment. I suggest that there are two methods by which the amount of any compensation owed to Mr. Hamilton may be calculated.

The first method requires expertise not readily or quickly available to my staff. It involves the calculation of the resale value of the equipment at the time of sale: from this amount would be reduced the actual amount applied to Forward's debt to W.C.B., $6,476.48. Interest would then be calculated on that figure to the date of payment. To that amount would be added the amount determined to be Mr. Hamilton's business losses in the intervening period, missed opportunities for contracts and any damage to the goodwill or good name of Forward as a result of its inability to operate. A further specific amount would be included. In order to pay his chattel mortgage debt to Island Finances, Mr. Hamilton hired a contractor to log the remaining timber on his lease, at a cost of approximately $60,000.00. I am informed that Forward would have been able to do the equivalent work for only $30,000.00, had Mr. Hamilton's equipment been available. As I noted, I cannot quickly research the specific figures involved here, but I would anticipate a total in the neighbourhood of $120,000.00.

The second method of determining the amount of any compensation owing to Mr. Hamilton is to determine the amount needed to purchase equivalent equipment at this time. Less, of course, the amount applied to the W.C.B. debts as noted above. I have requested, but not yet received, a

...2

catalogue showing similar, used equipment for sale by Coast Tractor at the time. I will forward that information to you in the near future. I am informed that the cost of heavy equipment has risen markedly since the date of seizure against Forward. Subject to the forthcoming catalogue, I am told that equivalent used skidders may be purchased today for around $40,000.00 each. The amount for a D7 or 8 cat would be less, perhaps $25,000.00. Thus, I anticipate a total in the area of $90,000.00 or $100,000.00.

Neither of these methods include any calculation for the amount of interest outstanding to Island Finances on Mr. Hamilton's chattel mortgage. I have enclosed Island Finances' statement totalling $22,008.79. That calculation is of interest owing from the date of the seizure to the dates of payment of the principal by Mr. Hamilton. Island Finances has not, thus far, requested interest on the amount. As I understand it, Island Finances would be willing to accept a direct settlement of its account, or to be paid by Mr. Hamilton as a result of any compensation he receives.

My staff contacted Mr. Hamilton to canvas his opinion as to the amount he would consider sufficient, if a settlement is contemplated. Mr. Hamilton stated that he would consider the figure of $150,000.00 to be a minimal interpretation of his losses, including lost business opportunities, the value of the equipment, the debt of $22,000.00 to Island Finances and the additional expenses he incurred to contract the logging of his timber lease. Mr. Hamilton also commented that he expected that he would be required to pay income tax on any such settlement, thus reducing the amount available to re-equip his business.

In summary, the minimum figure at issue appears to be $110,000.00 - $120,000.00. My recommendation of a referral to arbitration was as a result of my lack of easy and accurate calculation of the amount. I would, of course, be pleased to research the matter further at Cabinet's request, if a settlement offer is to be made.

Yours sincerely,

Karl A. Friedmann
Ombudsman

enclosure (1)

ISLAND
FINANCES
LIMITED
764 Fort Street, Victoria B C

In Victoria over 60 years • Locally owned and operated • Phone 386-6381 • Mailing Address - P O. Box 338. Victoria, B C., V8W 2N6

February 28, 1984

Ombudsman,
8 Bastion Square,
Victoria, B.C.
V8W 1H9

Attention: Dorothy Hayward

Dear Madam:

Re: our acc.#9538-J. D. Hamilton

Further to our conversation, the statement set out below shows the balance of our account and the amount of interest outstanding since Mr. Hamilton's equipment was seized by the Workers' Compensation Board around the 1st of August, 1982.

Balance as of August 15th, 1982		$63,914.00
Interest for this period.	$16,617.64	
Balance as of September 14, 1983		$24,350.00
Interest for this period.	$2,435.00	
Balance as of February 21,1984		$2,956.15
Total Interest	$19,052.64	$19,052.64
Total Balance owing		$22,008.79

For your own information, this is to advise that the cost for us to obtain this funding for that same period was $10,296.97.

We trust that this is the information you require to assess what our claim against the Workers' Compensation might be.

Yours very truly,

R. E. Bertoia/aa
e. & o. e.

Manager

Delivered by hand.

Province of
British Columbia

Ministry of
Intergovernmental
Relations

Parliament Buildings
Victoria
British Columbia
V8V 1X4

April 16, 1985

Dr. Karl A. Friedmann
Ombudsman
8 Bastion Square
Victoria, B.C.
V8W 1H9

Dear Dr. Friedmann:

Re: Mr. J.D. Hamilton/Forward Sawmills Ltd.

Your letters of April 10 and 11, 1985 have been received. You ask for a Cabinet response by April 17th, if at all possible. For reasons I will explain that is not possible, but I can assure you that the response will be forwarded to you as soon as possible.

Firstly, legal counsel are now engaged in a study and appraisal of the judgment delivered by Mr. Justice Gibbs in this case on April 9th last. I am aware that counsel's particular attention is being given to that part of the judgment that refers to the possible pursuit by Mr. Hamilton of the "whatever remedies are available to him by way of appropriate proceedings". I am told that attention is so focussed because there never has been an acknowledgment of your position that a liability exists in law, given the presence and effect of Section 52 of the Workers' Compensation Act. In any event that is being studied, and I will be writing to you again, hopefully quite soon.

It is now apparent from your April 11th letter that you are seeking a payment by the Crown in excess of $100,000. Your letter of April 11th containing proposed figures of that magnitude has been referred for study.

As stated, you will hear further fom me.

Yours truly,

Bert Hick
Secretary to Cabinet

AEH/gc

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 83 50440

April 23rd, 1985

Mr. Bert Hick
Secretary to Cabinet
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Hick:

Re: Mr. J.D. Hamilton and Forward Sawmills Ltd.

I was concerned to receive your letter of April 16, 1985, in which you suggest that I am seeking a payment by the Crown. I am not. My recommendation of a referral to arbitration, on the terms and conditions outlined in my report, stands.

At your request, I provided a general calculation of the amounts at issue, if the Cabinet wished to consider making a payment to settle the matter. I indicated that I was willing to continue to research the figures if so requested by Cabinet.

I made that offer as I do not wish to prevent any possible resolution for my complainant. Nevertheless, my recommendation remains unchanged and I request Cabinet's response to that recommendation in the near future.

Yours sincerely,

Karl A. Friedmann
Ombudsman

By Hand

Province of
British Columbia

OFFICE OF THE
CABINET SECRETARIAT

Ministry of
Intergovernmental
Relations

Parliament Buildings
Victoria
British Columbia
V8V 1X4

May 10, 1985

Dr. Karl A. Friedmann
Ombudsman
8 Bastion Square
Victoria, B.C.
V8W 1H9

Dear Dr. Friedmann:

Re: Mr. J.D. Hamilton and Forward Sawmills Ltd.

The Lieutenant Governor in Council has given further careful consideration to this matter. It is mindful of the observation made in this matter by Mr. Justice Gibbs in his judgment of April 9, 1985 that if there is a decision to decline to accept or follow your opinions on law or jurisdiction and to decline to accede to your recommendation as to remedy, "... it will be up to Hamilton to pursue whatever remedies are available to him by way of appropriate proceedings, and if he does so, the decision will be made upon the evidence before the court and the application of the relevant law, regardless of the Ombudsman's findings." Indeed that observation is quite consistent with the statement of the Supreme Court of Canada in The British Columbia Development Corporation and the First Capital City Development Company Ltd. vs. Karl A. Friedmann et al, (1985) 55 NR 298 (SCC); (1985) 14 DLR (4th) 129; (1985) 1WWR 193 that "The Courts, not Ombudsmen, have responsibility for remedying violations of legal rights."

Considering the time and effort that many persons have already invested in this matter, the Lieutenant Governor in Council is not anxious to make the indicated declination if it can be avoided. If that were to happen, leaving a formal court action with pleadings and discoveries, etc. as the only available alternative to Mr. Hamilton, the result would be very expensive and time consuming. Therefore, the Lieutenant Governor in Council has looked for a more

...2

expeditious and less expensive method of resolution, and in doing so has focussed on your report of February 12, 1985 and its supporting documents. It has concluded that you have correctly pointed in the direction of arbitration as a suitable method.

You are aware that there has never been acceptance by the Ministry of Attorney General or the Workers' Compensation Board of the presence of what you describe, both in the narrative of your report and in your "findings", as a "mistake of law". That is the very matter that the Ministry of Attorney General suggested, in its March 30 1984 letter, be referred for a court interpretation. That would, of course, be a much more expeditious and less expensive procedure than a full scale law suit by Mr. Hamilton. While you indicate that you saw this as "a helpful route to follow", you imply that this suggestion collapsed over the matter of costs. A review of your letter of April 12, 1984 discloses that you asked for the Ministry's position, with respect to its suggestion of a reference, on the following four issues:

1. Will the Ministry, either individually or in conjunction with the Board, undertake to pay all legal costs of both Mr. Hamilton and Island Finances Ltd. as parties to this action? It may be that Mr. Hamilton and Island Finances Ltd. feel that their interests are sufficiently close that they could present a joint submission: at this stage that is not clear. I am also assuming that any costs to Mr. Hamilton and Island Finances Ltd. would be within the range of tariff usually billed to your Ministry, which is, I understand, $100. per hour.

2. Will the Ministry agree, assuming that court scheduling allows, to present the application forthwith. I would have grave concerns about agreeing to this suggestion if the matter could not be decided by this summer. While one cannot predict court schedules, this matter should be dealt with in Chambers. Your undertaking, along with the Board's, to proceed as quickly as possible with the application would assist me in arriving at a decision.

...3

3. Will the Ministry undertake to be bound by the decision of the trial judge, and can you offer any commitment that the Board would also agree to this position? I can see no reason to suspend my own involvement, if it were your intention or that of the Board's to appeal an unfavourable ruling.

4. Is there agreement to proceed on the application on the facts of this complaint, and only those facts?

On April 27, 1984, the Ministry of Attorney General responded to your four points as follows:

1. Scheduling - You have requested an undertaking from the Ministry to proceed as quickly as possible. This Ministry has no control over counsel not representing the Crown, and therefore, cannot give the undertaking requested. However, I am authorized to say that this Ministry would fully cooperate in bringing an application to court in a timely manner.

2. Decision of Trial Judge - This Ministry would never agree to waive a right of appeal in advance, nor could it offer any commitment on behalf of the Workers' Compensation Board since it is an independent agency.

3. Facts of this complaint - A special case could be formulated under Rule 33, setting out the facts necessary for the court to interpret s. 52.

4. Costs - Island Finances Ltd., by virtue of its position vis-a-vis Mr. Hamilton, has the primary interest in pursuing a claim against the Crown for alleged unlawful seizure and sale by the Sheriff. Island Finances Ltd. has not chosen to initiate proceedings. This Ministry could not justify payment of money out of public funds to provide Island Finances Ltd. with a lawyer to pursue their claim against the Crown. As an independent financial corporation, they undoubtedly can afford legal services to pursue their claim, and if they choose not to do so that is their decision. Also, Mr. Hamilton should require no representation separate from Island Finances Ltd. since, presumably, they have identical interests in attempting to regain the

...4

chattels or obtain compensation for the chattels seized. If there is an issue between Mr. Hamilton and Island Finances Ltd., then that is separate and apart from the s. 52 issue, and the Crown should not be put to the expense of settling any private legal differences as between Mr. Hamilton and Island Finances Ltd. Finally, it must be kept in mind that if your interpretation of the law is correct and Island Finances Ltd. takes that position, the court would be quite sympathetic to a request for costs in their favour.

It would seem that your issues 2 and 4 were resolved or if not, are capable of resolution to your satisfaction.

Your third issue or perhaps more properly described as your third condition was outrightly rejected, and correctly so. You ask the impossible in requesting an advance undertaking that there will be no appeal from the decision of the judge of first instance. A Court of Appeal is made available in this province for those who believe the judge of first instance has fallen into error. To deny such access is to deny due process. Your proposal in that regard is unacceptable. Your situation would be much different today had you been precluded from appealing the decision of judge of the first instance in the B.C.D.C. case.

The response on the matter of costs was a reasonable one. In the interests of finding a resolution to this matter, however, the Crown will agree to provide for counsel for Mr. Hamilton in the manner that you have suggested to a maximum of $2,500. if you continue to believe he requires counsel separate from that of Island Finances Ltd.

If you will move from your position on issue 3 as the Crown has moved from its position on issue 1, then the suggestion would be that the interpretation be sought from the court immediately by way of a Chamber application. If the ultimate court adjudication does not support your position, the matter will be concluded, insofar as this aspect of it is concerned. If, however, the ultimate adjudication is in favour of your position, then the arbitration will proceed forthwith on your terms.

...5

It is hoped that you will see this response as being reasonable, and one that seeks to bring about fair resolution to all.

Yours truly,

Bert Hick
Secretary to Cabinet

AEH/gc

Province of
British Columbia

OFFICE OF THE
CABINET SECRETARIAT

Ministry of
Intergovernmental
Relations

Parliament Buildings
Victoria
British Columbia
V8V 1X4

June 3, 1985

Dr. Karl A. Friedmann,
Ombudsman,
8 Bastion Square,
Victoria, B.C.
V8W 1H9

Dear Dr. Friedmann:

Re: Mr. J.D. Hamilton and Forward Sawmills Ltd.

This will acknowledge receipt of your letter dated June 3, 1985 concerning the above complaint.

Yours truly,

Bert Hick
Secretary to Cabinet

AEH/gc

Province of
British Columbia

OFFICE OF THE
CABINET SECRETARIAT

Ministry of
Intergovernmental
Relations

Parliament Buildings
Victoria
British Columbia
V8V 1X4

June 13, 1985

Dr. Karl A. Friedmann,
Ombudsman,
8 Bastion Square,
Victoria, B.C.
V8W 1H9

Dear Dr. Friedmann:

Re: Mr. J.D. Hamilton and Forward Sawmills Ltd.

Your letter of June 3, 1985 has received consideration. Further lengthy correspondence dealing with a number of the comments you have made will do nothing to resolve the matter. Rather, it appears appropriate to state that a fair reading of your letter would indicate that you have rejected the proposal for settlement and disposition as outlined in the May 10th letter. A fair reading also indicates that you have decided that unless your recommendation of an immediate referral to arbitration is accepted, it is your choice to seek whatever remedial action you can for Mr. Hamilton by making a report to the Legislative Assembly. If that is your decision and it is the path that Mr. Hamilton would also chose to follow rather than pursuing the proposal for settlement and disposition that has been put to you, then that is the procedure that you presumably will follow.

Just to clarify one matter in light of what you have said and that would be of interest to Mr. Hamilton, it was intended that the $2,500. maximum ceiling in legal costs would apply to the application before the originating court. Mr. Hamilton could expect consideration with fairness and equity on the matter of costs should proceedings go beyond the court of initial jurisdiction.

Yours truly,

Bert Hick
Secretary to Cabinet

AFH/gc